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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

later: Mr. OGURTSOV
(Vice-Chairperson)

later: Mr. WEISSBRODT
(Chairperson)

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(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

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The meeting was called to order at 10 a.m.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15, 19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6; E/CN.4/Sub.2/AC.4/2001/4 and 5; E/CN.4/Sub.2/AC.5/2001/2 and 3; E/CN.4/Sub.2/AC.5/2001/WP.2, WP.3, WP.4 and WP.6; E/CN.4/2001/85)

1. The CHAIRPERSON said that, since the Sub-Commission was about to resume its discussion of his own preliminary report on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1), he would relinquish the Chair.

2. Mr. Ogurtsov, Vice-Chairperson, took the Chair.

3. Mr. PARK said that the preliminary report had a consistent underlying theme, namely that, regardless of citizenship status, all persons should enjoy the fundamental human rights. It acknowledged the complex nature of the expression "non-citizen", which comprised a variety of persons having different social and legal entitlements. The range of those eligible for protection should be as inclusive as possible and it might be pertinent to examine the question of what being a non-citizen signified to different groups of people facing specific situations.

4. It would also be useful to look at the function of legal norms in the regulation of the relationships among non-citizens; in other words, the place of women, children and other vulnerable persons within their own groups. Moreover, the question should be examined what effective remedies were available under international human rights law if forms of injustice, including degrading and discriminatory practices, had been committed against non-citizens.

5. He supported all the tentative conclusions and recommendations in the preliminary report and particularly the need for the Committee on the Elimination of Racial Discrimination (CERD) to articulate the rights of individuals who were not citizens of the country in which they lived and to make more explicit the incorporation of protection for non-citizens.

6. As for the protection of minorities, the report of the Working Group on Minorities (E/CN.4/Sub.2/2001/22) constituted a model example of how a working group could function as a forum for constructive dialogue and productive results. As Chairperson-Rapporteur of the Working Group, Mr. Eide had played a key role in the formulation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and its final commentary, which should have a lasting impact on the protection of minorities.

7. Particular attention should be give to the very serious situation faced by minorities residing outside their own territory, whether temporarily or permanently, because they were often deprived of their basic human rights.

8. Mr. YOKOTA said non-citizens were very fragile people in current international relations because individuals were usually identified in terms of their personal relationship with a State through nationality. Consequently, when non-citizens needed State protection, it did not exist. United Nations human rights organs, such as the Sub-Commission, should thus pay special attention to the issue.

9. Nevertheless, the practical question arose of how to define the terms "citizenship", "nationality", "race" and "ethnicity". Two years previously, the lower court in Hamamatsu, Japan, had rendered a judgement to the effect that the owner of a jewellery store had caused mental injury to a Brazilian woman by requiring her to leave his shop on account of her nationality, and had ordered the owner to pay damages. The court accepted the plaintiff's argument that the shop owner's act violated the International Convention on the Elimination of All Forms of Racial Discrimination, assuming that the Convention applied to the case and also to relationships between individuals.

10. While he fully supported the judgement, he had a fundamental concern about the first assumption, because the case related to discrimination not on the basis of race or ethnicity but rather on that of nationality. Article 1, paragraph 1, of the Convention defined racial discrimination as meaning "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin" that impaired the enjoyment of human rights. That definition carefully avoided use of the term "citizenship", although the explicit mention of "national origin" could be interpreted as including citizenship, if citizenship, nationality and national origin were understood as having the same meaning. However, "national origin" usually had a different definition.

11. Thus, if that paragraph was interpreted in accordance with article 31 of the Vienna Convention on the Law of Treaties, which stipulated that treaty provisions must be faithfully interpreted in their usual meaning, distinction, exclusion, restriction or preference on the basis of citizenship did not mean racial discrimination, in terms of the International Convention on the Elimination of All Forms of Racial Discrimination. That interpretation was further strengthened by article 1, paragraph 2, of the Convention, which stipulated that the Convention would not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens.

12. It would appear from several of the cases referred to in the addendum to the preliminary report, that CERD took the view that discrimination on the basis of nationality was racial discrimination. He questioned the basis on which CERD had established its interpretation, however, in view of the provisions he had cited in article 1, paragraphs 1 and 2 of the Convention.

13. Mrs. DAES said she regretted that the Sub-Commission had insufficient time to consider such an important report as it deserved. She was in agreement with the tentative conclusions and recommendations and encouraged the Special Rapporteur to present his progress report

the following year. With regard to the concept of nationality, she suggested that it would be useful to refer to the work done by The Hague Conference on Private International Law.

14. Ms. MOTOC said that, to date, the preliminary report had simply outlined the legal framework of the issue. Chapter IV, section C related to the Charter of Fundamental Rights of the European Union, adopted in December 2000. However, before examining that instrument, the Special Rapporteur should have analysed the provisions that were previously in force, particularly article 8 of the Treaty Establishing the European Community. European citizenship had been introduced by the Maastricht Treaty on European Union and then revised by the Amsterdam Treaty and there was a very complete collection of case law regarding the citizen and the non-citizen. It would also be useful to analyse the current legislative framework of the European Union, since the issue of European citizenship had much to offer, particularly in connection with non-citizenship; for example, the relationship between a person's European citizenship and the citizenship of his or her own country could be illuminating.

15. Chapter IV, section D of the report analysed the European Charter for Regional or Minority Languages and observed that article 1 of the Charter differentiated between minorities and non-citizens (para. 143). In paragraph 147, other relevant developments in the Council of Europe were mentioned but they did not include the 1995 Framework Convention for the Protection of National Minorities, which was an important document because it had been ratified by most members of the European Union and also because many academic sources, when referring to it, had said that the concept of non-citizen was, at times, included within the concept of a minority.

16. Paragraphs 165-168 of the preliminary report referred to the Roma/Gypsies. A special group in the Council of Europe was working on that topic and there was a wealth of information available. Incidentally, the Roma had stated that they did not want to be called Gypsies; and she recommended that the Special Rapporteur should consult the Roma non-governmental organizations (NGOs) to determine what terminology should be used.

17. Mr. EIDE said he agreed with Ms. Motoc, concerning developments in the European context, in particular, since a very intensive debate was in progress on many of the questions included in the preliminary report. He also agreed with Mr. Yokota that the question of the difference between "citizenship" and "nationality" could be extremely confusing, since, although the definitions were somewhat more precise in international law, the terms had different meanings in different contexts and in different parts of the world. However, it was useful to start the report with a very clear premise that human rights were for everyone, whether citizens or non-citizens, and that each State was responsible for every person within its territory and under its jurisdiction, before determining and explaining the explicit exceptions for non-citizens.

18. A major concern that needed to be addressed was whether every person, including non-citizens, had access to effective remedies, because the latter were often uncertain in the case of non-citizens.

19. With regard to exceptions, the International Convention on the Elimination of All Forms of Racial Discrimination appeared merely to state that the Convention did not eliminate those exceptions that could be made under other international human rights instruments. Certain

exceptions could be made; for example, on the issue of political rights and on the right to leave a country and return to it. It would be useful to analyse what exceptions could be made with regard to economic, social and cultural rights and to examine the very ambiguous question referred to by Ms. Motoc concerning minorities and non-citizens, where the position adopted by the Human Rights Committee regarding article 27 of the International Convention on Civil and Political Rights was that minority rights extended to non-citizens.

20. Lastly, discrimination in the allocation of citizenship should also be examined. The issue had tremendous significance in the current debate in Europe, owing to the dissolution of large federations into smaller entities. The International Law Commission had addressed that issue and also the recent European Convention on Nationality.

21. Ms. HAMPSON said that the report contained a very thorough identification of the applicable legal norms and she looked forward to the next report on what actually happened in practice. In that regard, she wished to point out that the case law of the European Court and the former European Commission of Human Rights dealt with the rights of non-citizens in contexts other than deportation, such as immigration in order to marry. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms dealt with freedom of movement and appeared to recognize rather than grant what must, therefore, be an existing right of citizens or nationals to enter their country.

22. The issue of the right of entry of citizens who were excluded on racially discriminatory grounds had been found to constitute inhuman treatment in the case of East African and Asians. Issues had also arisen in relation to the prohibition of arbitrary detention and due process in relation to non-citizens; for example, a legitimate ground for detention was that action was being taken with a view to deportation and States appeared to have a wider discretion in that respect than when detaining on other grounds. The Commission had initially held that decisions on immigration or deportation were civil matters and therefore subject to the due process guarantees of article 6, but the European Court had for some years held that they involved public law and were therefore outside the protection of that article.

23. The treaty provisions, regulations and directives of the European Economic Community (EEC) and European Union law had had a profound impact on the question of the rights of non-citizens; a significant volume of case law also existed. When entering the EEC, the United Kingdom had been required to define who its citizens were for the purposes of EEC law. The preliminary report assumed that there were nationals or citizens and non-nationals or aliens. The former had one set of rights and the latter a more restricted set of rights. Although that was generally true, the case of the United Kingdom was rather more complex, since citizens of Commonwealth countries - who were British subjects - had less rights that citizens, but more rights than aliens.

24. Turning to the report of the Working Group on Minorities (E/CN.4/Sub.2/2001/22), she noted that the minorities covered fell into three broad categories: minorities with a distinct culture, language and religion, with a clear sense of identity and associated with a particular territory; religious minorities; and linguistic and/or cultural minorities spread over many parts of the territory. The question that arose, in the case of groups of Hungarian origin in

Eastern European States, for instance, was whether such groups should be regarded as a minority if minority status was to be denied to groups of immigrants who had been settled long enough to be entitled to citizenship.

25. She would also like to raise the issue of membership of and expulsion from a minority group. If the State made special provision for members of such a group, the question arose whether an individual could decide to renounce membership and, conversely, who was to decide in respect of applications for membership which were opposed? She suggested that the Working Group might consider that question, referring to the relevant case law of the Human Rights Committee.

26. Ms. SARDENBERG said the rights of non-citizens was a complex subject with many different dimensions, including a political dimension. The report marked an important step forward in the consideration of the subject, both by the Sub-Commission and by the United Nations system as a whole.

27. She wished to highlight certain of the preliminary report's tentative conclusions. The first was that, despite existing standards, violations still occurred and there was room for improvement at all levels, including the legislative. The second was that there was need for more information from Governments, NGOs, United Nations agencies and intergovernmental organizations. She supported the suggestion that all interested parties should be consulted on the actual situation facing non-citizens in the various countries. The third conclusion was that there was need to raise public awareness of the issue and to increase its political visibility. The 1985 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live, the text of which was virtually unknown, should be publicized, notably through inter-agency coordination and through the concluding observations of the treaty bodies.

28. The report noted that the concluding observations of the Committee on the Rights of the Child had often expressed concern at the negative impact of non-respect for the rights of non-citizens on enjoyment by children of their other rights, such as the right to health and education. Experience had shown that that was an area in which States parties were reluctant to provide information and to acknowledge instances of discrimination.

29. Regarding the possible withdrawal of CERD General Recommendation II and its replacement by a new draft, she suggested that the recommendation should be retained as a reflection of a particular historical situation, but that CERD should be encouraged to draft a new recommendation on the subject, taking into account recent developments.

30. Mr. SIK YUEN, referring to the case of gender discrimination referred to in paragraph 25 of the addendum to the report (E/CN.4/Sub.2/2001/20/Add.1), said that Mauritian immigration law had since been changed and that the lady mentioned here, Shirin Aumeeruddy-Cziffra, had since become Minister for Women's Affairs, and had been instrumental in bringing the relevant bill before Parliament.

31. Mr. GÓMEZ-ROBLEDO VERDUZCO said that the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 was a major step forward in that it included the crucial right of such workers to equal treatment with

nationals regarding working conditions and remuneration, and it was incredible that, up to May 2001, only 16 States had ratified or acceded to it. In view of the fact that the Member States of the United Nations currently numbered some 190, and that the Convention had been open for signature for more than 10 years, the picture was, indeed, a discouraging one.

32. It was true that, since only 20 more ratifications were required, the Convention would come into force fairly soon, but the majority of industrialized countries unfortunately wanted nothing to do with it. That was most alarming, since it was precisely those countries which were needed to make the Convention effective. Without their participation, it would remain a dead letter. Inequality in the effective enjoyment of rights was all the more unacceptable in that it contradicted the basic concept of human rights.

33. Mr. KARTASHKIN said that the question of the difference between nationality and citizenship had been raised by a number of speakers. Whereas the two concepts were the same in many countries, in others they were differentiated. The Russian Federation in fact made a distinction between citizens, non-citizens, and what were referred to as compatriots. After the collapse of the Soviet Union, some 25 million Russians had found themselves inhabiting one or other of the newly-created sovereign and independent States of the Federation. Some had obtained citizenship of the State in which they lived, others had become citizens of Russia, and a third category remained non-citizens. The situation of the latter category gave rise to some concern.

34. Some 105 States had ratified the International Covenants on Human Rights. Those instruments made no distinction between citizens, non-citizens and other categories, referring to rights to be enjoyed by "everyone" or "all persons". The sole exception was article 25 of the International Covenant on Civil and Political Rights, which defined certain political rights as rights to be enjoyed by "every citizen".

35. The Sub-Commission should emphasize that States had an obligation to do their utmost to guarantee the full range of human rights to non-citizens as well as to citizens.

36. Mr. GUISSÉ having congratulated Mr. Weissbrodt on an exhaustive preliminary report which shirked none of the many problems involved, said that the norms set out in existing international human rights instruments were very wide in scope and covered virtually every aspect of life. Consequently, to addressing the subject of the rights of non-citizens was focusing attention on a small island in an ocean of recognized rights. What was needed was rather action to promote human rights in general.

37. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was applicable to the case of persons who had left their own countries and were most in need of protection, but that Convention had never been implemented by the developed countries. He was unable to see in what way the rights of non-citizens could differ from rights that had already been defined, and considered that further definitions of such rights would be useless in the absence of a strong political will in host countries to respect them. The problem would become even more serious if an obligation to discriminate on grounds of birth or place of origin were created. The development of yet another instrument would add nothing to the protection of the human rights of non-citizens.

38. Mr. WEISSBRODT, replying to Mr. Kartashkin, said that what he had intended to do was review the legal provisions that existed, and the way in which they were interpreted in particular countries, such as Estonia and Latvia, at a particular time. His preliminary report did not purport to give an account of the actual situation throughout the world. The concluding observations of the Human Rights Committee (E/CN.4/Sub.2/2001/20/Add.1, paras. 49 and 50) reflected the situation in Estonia in 1995, but not the current situation. He had tried to identify particular determinations by human rights bodies in order to help the Sub-Commission understand the law, rather than in order to review the situation facing non-citizens generally.

39. In response to Mr. Park, he said that, in the future, he intended to look into the important issue of vulnerable groups such as women who had lost their nationality because of divorce, and children whose nationality had not been adequately recorded. In reply to Mr. Yokota, he referred to article 1, paragraph 3, of the International Convention on the Elimination of All Forms of Racial Discrimination, which stated that nothing in the Convention was to be interpreted as affecting the legal provisions of States parties concerning nationality provided that such provisions did not discriminate against any particular nationality. The incident Mr. Yokota had mentioned appeared to involve discrimination against a Brazilian, which clearly would have been forbidden under the Committee's jurisprudence.

40. He agreed with Mrs. Daes that a reference to The Hague Convention ought to be added, and looked forward to further information from her on the subject of trafficking. He was grateful to Ms. Motoc for her observations on the European Union, and would be glad of her assistance on minority issues in that context.

41. He endorsed Mr. Eide's point that it should be the exception that persons in certain categories were deprived of certain rights, such as the right to vote. Ms. Hampson's distinction between four categories, British citizens, British subjects, aliens and Irish, illustrated the complexity of the situation prevailing in a particular country, a situation which would appear to conflict with the provisions of human rights instruments which that country had ratified. It was his task to try to resolve the contradictions created by the conduct of Governments.

42. He was grateful to Ms. Sardenberg for supporting his conclusions, and agreed that more facts were needed and that the 1985 Declaration needed to be publicized. He particularly appreciated her advice that General Recommendation 11 should not be withdrawn, but that a new general recommendation on the same subject should be formulated. In response to Mr. Gómez-Robledo Verduzsco, he pointed out that only four more ratifications were needed to bring the convention in question into force, thus creating a new body of treaty law that should eventually have a positive impact on the situation.

43. The assignment he had been given was an exacting one, and he appealed to Governments, NGOs and colleagues for contributions that would help him fulfil it. He would try to cover the subject in a more systematic way in his next report.

44. Mr. Weissbrodt resumed the Chair.

45. Mrs. DAES, introducing her final working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21), said that all the information and comments

submitted by Governments, indigenous peoples, NGOs and international organizations, had been gratefully received. She drew attention to the doctrine of terra nullius, referred to in paragraph 128, and its damaging effects on indigenous peoples. Such discriminatory ideas continued to be evident in legal theory and practice, and indigenous peoples often remained trapped in a legal discourse that did not embrace their distinct cultural values and perspectives. The greatest single problem for indigenous peoples in the contemporary world was the failure of States to demarcate indigenous lands. As a result of that failure, the purely abstract or legal recognition of indigenous lands and resources could be practically meaningless.

46. The working paper illustrated the need for a flexible approach to the consideration of indigenous peoples and their relationship to land, as well as the urgency of the search for solutions to long-standing problems. It should be stressed that indigenous peoples had a profound, spiritual and material relationship to their land and resources, with various social, cultural, spiritual, economic and political dimensions.

47. With a view to facilitating solutions to complex problems, she had devised a set of fundamental guiding principles, based on the conclusions in paragraphs 118 to 143, for measures affecting indigenous peoples. Lastly, paragraphs 145 to 164 contained a number of recommendations addressed to States, the United Nations system, indigenous peoples and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

48. Mr. YIMER said that the working paper produced by Mrs. Daes was so thorough that it would be more appropriate to call it a study. As the recent creation of a Permanent Forum for Indigenous Peoples had demonstrated, the issue of indigenous peoples and their relationship to land needed to be a priority item on the agenda of the international community. Drawing attention to various parts of the working paper, he emphasized the point made in paragraph 13 that it was virtually impossible to separate the concept of indigenous peoples' relationship to their lands, territories and resources from that of their cultural differences and values. He highlighted the importance of the fundamental guiding principles in paragraph 144, particularly those in subparagraphs (a), (b), (c), (d) and (e).

49. Mr. EIDE said that the contribution by Mrs. Daes was much more than a working paper; it was the culmination of a lifelong study. He highlighted the role played by John Locke in the development of doctrine concerning the ownership of land. Locke had elaborated a notion of property which guaranteed the rights of individual property owners but had a detrimental impact on community rights. That notion had provided the theoretical framework for colonial powers, which held that the absence of individual proof of ownership meant that land belonged to nobody and was therefore available for colonization. The principles advocated by Mrs. Daes constituted a re-examination of the most basic tenets of ownership, and was an attempt to change the legacy of Locke's work.

50. Mrs. WARZAZI, having paid tribute to the tireless efforts of Mrs. Daes to raise awareness of the problems experienced by indigenous communities, said that Governments could no longer be allowed to ignore their responsibilities with regard to the enhancement of the status of indigenous peoples. She drew attention in particular to subparagraph (a) of the

fundamental guiding principles elaborated in paragraph 144 of the working paper, in which it was stated that the rule of law must be rigorously established and maintained in every country with respect to indigenous peoples and their lands, territories and resources.

51. Ms. MOTOC said that the working paper constituted a model for the work of other Sub-Commission experts. It was particularly valuable because of the impact it would have in all fields, ranging from the political to the academic. The Working Group on Indigenous Populations had already requested Mrs. Daes to carry out a further study on indigenous peoples' permanent sovereignty over natural resources.

52. Mr. van HOOF said he associated himself with the previous speakers who had praised Mrs. Daes' fine working paper and unremitting efforts on behalf of indigenous peoples. It was to be hoped that the fundamental guiding principles regarding indigenous peoples' lands, territories and resources would be fully incorporated into international law and that the recommendation in paragraph 157 for the establishment of a fact-finding body or the appointment of a special rapporteur with "peace-seeking" powers would be implemented.

53. Mr. GUISSÉ said he was indebted to Mrs. Daes for teaching him most of what he knew about indigenous issues. Nobody was better qualified to study the relationship of indigenous peoples to land; her work would be highly appreciated by future generations of students.

54. Mr. YOKOTA said that it was largely thanks to Mrs. Daes that the rights of indigenous peoples formed part of the mainstream of human rights studies and discourse. Indigenous peoples all over the world had become aware of their rights and, sustained by renewed confidence and self-respect, had begun to assert them. Mrs. Daes was uniquely qualified to write a scholarly and yet realistic working paper on such a sensitive political issue as the right to lands, territories and resources, which were crucial to the identity of indigenous peoples but had been seized from them again and again throughout history. It was time for States to recognize that the right to lands, territories and resources was the source of indigenous peoples' right to development and the wellspring of their culture and shared historical experience.

55. Mr. PARK said that Mrs. Daes had earned the high esteem of the international community for her work on behalf of indigenous peoples. He warmly commended her final working paper, which was the culmination of years of personal dedication. The possession of land was a prerequisite for indigenous peoples' full enjoyment of their right to a decent living and of the right of self-determination, particularly in terms of preservation and enhancement of their economic, social, cultural, spiritual and political identity.

56. It had been recognized that a legalistic and positivist approach would merely perpetuate the injustices suffered by indigenous peoples through the forcible and fraudulent acquisition of their land. The so-called principle of terra nullius, which survived in some cases as an insurmountable barrier to the realization of their legitimate claims, was too vague to be recognized as an established principle of international law. Indeed its validity as a legal norm should be subjected to scrutiny, particularly in the light of evolving human rights law.

57. The message of the working paper on indigenous peoples and their relationship to land should be brought to the notice of Governments, international institutions and the indigenous

peoples themselves. He recommended that due consideration should be given to the shared experience of indigenous peoples in all countries where they had been victimized. Wider access to information and legal advice should be provided to indigenous peoples in their negotiations with Governments and institutions, and action should be taken to promote the sharing of experience and dissemination of expertise among the indigenous peoples themselves.

58. He fully endorsed the conclusions and recommendations contained in the report.

59. Ms. HAMPSON said that, when reading Mrs. Daes' comprehensive and fascinating working paper, she had been struck by the fact that the significant progress made over the past decade in dealing with indigenous issues had been accompanied by some appalling developments. While lack of awareness of indigenous issues might have served as a mitigating factor in the past, there was no such excuse for any of the adverse measures adopted in the past decade. It often seemed to be a case of economics prevailing over human rights. One particularly startling example was that of a State that had introduced excellent legislation but had then not only failed to implement it but had engaged in activities inconsistent with indigenous rights and had not prevented others from doing so also.

60. The resolution adopted by the Sub-Commission earlier in the session on the wrongs resulting from slavery, colonialism and wars of conquest might contain material of use to indigenous peoples. Moreover, a resolution on the right of return to be submitted later in the session, contained some provisions on the restoration of infrastructure that might be of interest to displaced indigenous peoples.

61. Mrs. DAES, Chairperson-Rapporteur of the Working Group on Indigenous Populations, introducing the report of the Working Group on its nineteenth session (E/CN.4/Sub.2/2001/17), said that the attendance, by over 1,000 participants, including representatives of about 70 Governments, had been unique in the history of United Nations working groups. The main theme had been indigenous peoples and their right to development, including their right to participate in development affecting them. Other issues discussed were globalization and the meaning of the concept of sustainable development for indigenous peoples. The Working Group had adopted a number of recommendations and had assigned members the task of preparing working papers for submission to the next session on issues deemed to be of special importance.

62. On behalf of the Working Group, she had prepared two working papers, concerning racism against indigenous peoples and ways of combating such racism, for distribution at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. A great many representatives of indigenous peoples planned to attend the World Conference. They had requested the Working Group, the Office of the High Commissioner for Human Rights (OHCHR) and Governments to facilitate their participation. The expenses of 79 participants would be covered by the United Nations Voluntary Fund for Indigenous Populations. She had appealed to the international community to continue to contribute to that Fund and to the United Nations Voluntary Fund for the International Decade of the World's Indigenous People, which had helped to finance a number of important projects on behalf of indigenous communities throughout the world.

63. Mr. RODRIGUEZ-CUADROS, having associated himself with the previous speakers who had commended the commitment of Mrs. Daes to the campaign for recognition of the rights of indigenous peoples, said that the next stage in the campaign was to secure international recognition of those rights. Unfortunately, it was still proving difficult to reach agreement on a draft United Nations declaration on the rights of indigenous peoples or on declarations or legal instruments at the regional level. But some form of binding or non-binding commitment among States was the only way of securing positive action to enforce the rights concerned.

64. However, two encouraging developments had recently taken place in the Americas. The working group on the draft inter-American declaration on the rights of indigenous peoples had agreed to use the term "indigenous peoples" rather than "indigenous populations". Secondly, the Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, the member countries of the Andean Community, meeting in Machu Picchu, Peru, on 29 July 2001, had adopted the Machu Picchu Declaration in which they had recognized the term "indigenous peoples" and had undertaken to respect and promote indigenous rights, including the right to resources and lands, and to develop community programmes for the promotion and defence of those rights. The Presidents had also set up, within the Andean Community, a standing forum of representatives of States, indigenous organizations and human rights NGOs and other organizations of civil society to discuss the situation of indigenous peoples in the Andean region and to monitor implementation of the provisions of the Declaration.

65. Mr. SORABJEE, having complimented Mrs. Daes on her erudite and balanced final working paper on indigenous peoples and their relationship to land, said that he particularly welcomed the chapter of the report of the Working Group on Indigenous Populations entitled "Standard-setting activities, including a review of indigenous peoples' relationship with natural resource, energy and mining companies". Indigenous rights were being violated in covert ways by such companies and their practices should be subjected to closer scrutiny.

66. The apprehension expressed in paragraph 87 of the report that the Indian Government planned to amend the fifth Schedule, and even the Constitution, to the detriment of the indigenous peoples of India, was totally unfounded. He would himself be the first to oppose any such plan.

The meeting rose at 1 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 August 2001, at 3 p.m.

Chairperson: Mr. WEISSBRODT

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

Social Forum

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3 p.m.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)

Social forum (E/CN.4/Sub.2/2001/CRP.2 and 4)

1. Mr. BENGOA recalled that the Commission on Human Rights had decided at its fifty-seventh session to authorize the Sub-Commission to hold a forum on economic, social and cultural rights, to be known as the Social Forum (decision 2001/103). During subsequent consultations, the officers of the Sub-Commission and the Secretariat had thought that it would be a good idea to start by holding a preparatory meeting to specify the ideas, objectives, form and working methods of the Social Forum and to decide who should attend. To that end, the Sub-Commission had invited various senior figures from the economic and social fields and from international organizations to give their views on the initiative.

2. Globalization appeared to have become the defining feature of social life. Local economies had been opened to global markets, international trade rules had been defined in the international decision-making bodies, free trade agreements had been signed in many places and instantaneous communication, with its attendant advantages and threats for the most vulnerable groups, was becoming widespread. Governments were trying to align their economies and societies with global policies by lowering their customs tariffs or making labour markets more flexible. It was essential for every country to enter the twenty-first century well placed to face the global economy.

3. The globalization of markets and communications, or "top-down globalization", had to be contrasted with the globalization of economic, social and cultural rights, or "bottom-up globalization". That was actually the justification for setting up the Social Forum. Like it or not, the subject of globalization was on the agenda, as shown by the violent street demonstrations against it in the world's big cities, and a forum for debate and proposals on it needed to be opened within the international organizations.

4. The first thing to do was to define the objectives of the Social Forum. One of those objectives would be to integrate economic, social and cultural rights into macroeconomic policy decisions, decisions on controlling international trade, free trade agreements, the economic and social policies adopted by States, the decisions and policies on investment, development and trade implemented by financial institutions, transnational corporations and other players in the global economy, as well as public/private development cooperation policies. The example of environmental policies could be taken as a starting point: they had gradually been taken into account in the decisions of many international organizations and public and private enterprises. Then there would be a situation in which economic, social and cultural rights were really enforceable and had to be taken into account when a new policy was still on the drawing board and before an investment was made or an economic policy acted upon.

5. A second objective of the Social Forum might be to advance the analysis of accountability in the social sphere. While the Committee on Economic, Social and Cultural Rights played an important role in that field as far as each individual country was concerned, nothing similar existed with regard to economic decisions taken at the global level.

6. Thirdly, the Social Forum should be a home to intellectual innovation or, in other words, an accessible forum where the new economic and social development actors could express new viewpoints and come up with new proposals. As it was, some major categories of economic and social development actors had no access to international bodies and were working at other levels. It might therefore be a good idea to consider setting up a "virtual" social forum where, thanks to new communications technology, the views and proposals of thousands of people and organizations working in the field of economic and social rights could be collected before the Forum's annual session.

7. Lastly, the Social Forum should also be a home to standard-setting initiatives. The simplest way to proceed would be to ask the Sub-Commission members taking part in the Social Forum to draw up an annual report containing proposals for draft resolutions, studies or standards, which would be submitted to the Sub-Commission for approval. The Sub-Commission would study the proposals, which, once adopted, would be sent to the Commission on Human Rights and then to other standard-setting bodies in the United Nations system.

8. On the question of which subjects the Social Forum might address, he referred to the document he had prepared (E/CN.4/Sub.2/2001/CRP.2). He strongly suggested that priority should be given to analysing new forms of poverty in a globalized economy, a subject which had been widely covered by many international organizations.

9. Finally, it was perhaps as important - if not more so - to consider how to proceed as to select the objectives to be discussed. Quite apart from the fact that the Social Forum should be as open as possible, it would appear difficult to achieve satisfactory results if the Social Forum was held at the same time as the session of the Sub-Commission. The Commission should therefore be urged to agree that it should be held between sessions of the Sub-Commission or, at the very least, just before a session.

10. Mr. RICUPERO (Secretary-General of the United Nations Conference on Trade and Development (UNCTAD)) said that two major phenomena must be taken into account in the discussion on the objectives and topics of the Social Forum, namely, the growing reaction to certain trends in globalization and the deterioration of the global economy.

11. The recent tragic events in Genoa and the growing protests against trade negotiations showed that those questions could no longer be dealt with by specialists and experts, but also concerned the "man in the street". They also showed that questions related to the structure and functioning of the economy, such as trade rules, structural adjustment or the response to financial crises, could no longer be treated in isolation from their impact on human rights and other moral values. In other words, such economic concepts as competition were not neutral and could not be considered superior to other values. They had to be defined and applied in relation to their foreseeable impact on the well-being and rights of the people concerned, particularly the most vulnerable members of society. That principle clearly placed limits on the freedom to solve economic problems on purely economic or technical grounds.

12. Economic realities such as the slowdown in growth of most of the major economies also had to be considered in discussions on the implementation of economic, social and cultural

rights. Consequently, once the Social Forum had become a reality, it would probably be found that not all the legitimate goals and aspirations were compatible simultaneously. Conflicts between economic and social values would probably lead to trade-offs and some economic efficiency gains would undoubtedly have to be foregone in order to respect more important human or moral values. It would be necessary to show caution, sobriety and realism and to be aware of the potential for conflict while trying to build a consensus around economic objectives compatible with human values.

13. At a more practical level, the most urgent issues to be taken up by the Social Forum needed to be identified. To do that, it might be useful to ask what concrete multilateral initiatives would be under way at the time when the Forum was due to be held. In fact, negotiations would be taking place in the World Trade Organization (WTO), partly in response to the expectations of the least developed countries and in an attempt to remedy the imbalances in the trading system. Also by then, the International Conference on the Financing of Development would have taken place in Monterrey and would have considered various trade and financial issues, including access by the poorest countries to financial markets and changes, desirable or otherwise, in the practices of the multilateral financial institutions. He therefore believed that, rather than trying to examine all the issues addressed in the various studies carried out within the framework of the Sub-Commission's work and rather than taking a general approach, the Social Forum should try to focus on work already under way in other bodies and to integrate a human rights dimension into them. For example, the Social Forum might consider whether the negotiations to address the aspirations of the least developed countries really were intended to make the preferential mechanisms proposed to those countries enforceable. It could also ensure that the discussions on the new financial architecture were not focused solely on the major developing countries or the emerging countries, but also took into consideration the 120 or so countries with no access to financial markets.

14. Lastly, he pointed out that, as one of the organizations called on to cooperate with the Social Forum, UNCTAD had undertaken a detailed analysis of certain trade and investment-related issues from a human rights standpoint so as to be able to contribute to the work of the Social Forum with concrete ideas on the compatibility of economic goals and human rights considerations.

15. Ms. JILANI (Special Representative of the Secretary-General on the situation of human rights defenders) said that the economic globalization model had been chosen without taking account of existing inequalities in development levels and the inequalities to which it gave rise between people in the social and economic fields. The model also had a direct effect on democracy, since, when a Government was unable to meet the needs of its people, disaffection with democracy and heightened tension between the State and civil society were the result. Moreover, globalization led to less transparency and forced Governments to take action without consulting civil society.

16. In that context, the Social Forum should not be content simply to ask questions, but should also determine whether it was possible to make specific changes in certain areas. For example, she was extremely concerned about the future of labour rights: in response to the constraints of globalization, new alliances were being forged between States, business circles and very powerful economic forces to devise ways to undermine those long-established rights. It

was, therefore easy to imagine how difficult it would be for a think tank like the Social Forum to improve the structure dealing with certain economic, social and cultural rights that were already giving rise to problems.

17. Other matters of concern were the failure to respect land rights, especially in South Asia, and the rise of militarism in entire regions of some countries, which had negative consequences for people's rights over their own resources and lands. It was also worrying that, when civil society became involved in certain issues, it was met with a disproportionate reaction. For example, questioning decisions that had an impact on the environment was sometimes treated as spying or challenging decisions that violated the right to employment was considered a threat to national security.

18. It was therefore important to realize that the Social Forum should not be just a think tank; it should also work closely with political decision-making bodies so that any strategies it defined had a chance of being put into practice.

19. The CHAIRPERSON gave the floor to Mr. Abi Saab, who had recently become a member of the Appellate Body of the WTO Dispute Settlement Body following a distinguished career as an academic and jurist. Mr. Abi Saab was a professor at the Graduate Institute of International Studies in Geneva, visiting professor at the Faculty of Law of New York University and a former judge of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

20. Mr. ABI SAAB (Appellate Body of the WTO Dispute Settlement Body) said that the problems in the social, economic and cultural fields were well known. Every year, a large number of reports were published, including the Human Development Report of the United Nations Development Programme (UNDP), the numerous UNCTAD reports and those by the thematic rapporteurs mentioned by Mr. Bengoa. The solution to the problems was also well known. What was missing was the strategy to bring about the desired change. Such a strategy was all the more difficult to devise as the forces at work, such as the global market or the international economy, were of an abstract nature: only their effects were felt. Moreover, whereas human rights concerned the individual, economic, social and cultural rights required a "macroscopic" approach, which had not yet been found.

21. The foregoing led to the question of collective rights, particularly the right to development. Without the community's right to development, how could the economic, social and cultural rights of the individuals who made up the community be realized? The right to development, which had originally been conceived as an argument to bring about the restructuring of the international environment, had become a sort of shield behind which one took refuge to ensure respect for human rights every time an activity was to be undertaken. That defensive approach could hardly be effective in a world steeped in a hyper-liberal ideology and characterized by deregulation. To advance the right to development, it was necessary, rather, to seek ways radically to restructure the international environment. The rich were more inclined to give to charity than to change the rules of the game; that was why they preferred to limit themselves to symbolic gestures. However, it was time to move on from that phase and reflect together on ways to restructure the global environment and delegitimize the aspects of the current international order that led to the aberrations witnessed all over the world.

22. The CHAIRPERSON gave the floor to Mr. Clapham, a professor at the Graduate Institute of International Studies in Geneva who had represented Amnesty International at the United Nations in New York and was currently an adviser in the Office of the United Nations High Commissioner for Human Rights.

23. Mr. CLAPHAM (Graduate Institute of International Studies in Geneva) said that he was struck by the complexity of the issues dealt with by the Sub-Commission. To address the issue of violations of social and economic rights in the contemporary world, it was necessary to consider multiple actors with multiple responsibilities. There had been some attempts in the debate to pin responsibility either on States, international institutions or transnational corporations. Such attempts had no place in a social forum, as the obligations depended on the context and were multiple, parallel and overlapping.

24. To illustrate his point, he took the example of a loan granted by an international institution to finance a project concerning health or education.

25. If the institution had international legal personality, it did of course have human rights obligations under customary international law. The Social Forum should provide a platform for dialogue on ways to ensure respect for human rights, including human rights impact assessments and greater participation by the individuals and groups affected by a project in its design and planning.

26. The States members of the organization making the loan also had international human rights obligations. In fact, the United Nations treaty bodies, including the Committee on Economic, Social and Cultural Rights, had already begun to highlight those obligations, as in the Committee's recommendations to the Belgian Government. However, the Social Forum also had a vital role to play. Since the persons presenting their Government's reports to the human rights bodies and those representing their country in the international financial institutions did not make the connection between their two tasks, the Social Forum could ensure that the persons dealing with loans in the international financial institutions took account of the expectation of the United Nations human rights bodies that the projects would be in conformity with human rights obligations.

27. Those responsible for carrying out the programme also had a set of obligations. Thus, the World Bank, for instance, would reject tenders from companies involved in corruption.

28. The obligations of the recipient State were quite clear, but, again, the Social Forum could play a role by acting as a forum for discussions on the pressures on, say, the health or education ministry when the ministry of foreign affairs or finance had little room for manoeuvre with regard to the terms of the loan. Moreover, the recipient State might also have other human rights obligations of which the other actors were unaware.

29. Generally speaking, all the actors - international organizations, member States, companies and non-governmental organizations - taking part in the projects had a duty not to be complicit in human rights violations. The concept of complicity was at the heart of the human rights obligations of companies, as pointed out in both the Sub-Commission's draft guidelines and the United Nations Global Compact.

30. In studying that concept with the Office of the High Commissioner for Human Rights to understand its limits, he had been astonished to find that what mattered in that complex system was not the obligations in the strict legal sense, but rather the expectations. Thus, a company was suspected of complicity in human rights abuses if it had not done what was expected of it in a given context. Companies were expected to act - perhaps even to exceed their legal obligations - to support human rights, possibly using their influence to put a stop to violations committed by Governments or armed political groups in the countries in which they operated. He cited a recent initiative that illustrated that trend. The Financial Times Stock Exchange had published a list of "socially responsible" companies or companies that met the following ethical criteria of the "FTSE4Good" initiative: to be working towards environmental sustainability, developing good relationships with the company's various stakeholders and observing human rights.

31. He was confident that the Social Forum could help analyse those expectations and achieve a better understanding of the complexity of the systems involved in the realization of economic and social rights. With a little luck, perhaps the Social Forum would help produce the sort of spontaneous reaction that would lead the various actors to establish the absolutely vital connections between them.

32. Mr. YOKOTA drew attention to the discussion in the Sub-Commission when the report on globalization and its impact on the full enjoyment of human rights had been introduced. It had been pointed out at the time that, in many cases, the States receiving a loan from the multilateral financial organizations had no choice but to accept the conditions imposed on them. Who, then, was responsible when a State was forced to accept conditions that prevented it from fulfilling other human rights obligations? Was the multilateral organization or the State responsible for that state of affairs? He would like to hear Mr. Clapham's views on that subject.

33. Moreover, during the same discussion, it had been asked whether the international financial organizations should also promote human rights, in the way that UNDP did, for example. What was Mr. Clapham's view on that?

34. Mr. GUISSÉ said that, in a forum worthy of the name, all viewpoints should be represented, but Africans were not represented in the discussion. The people who had the harshest realities to face must have a voice. He did not think that Mr. Abi Saab's views were shared by Africans.

35. Mr. EIDE said that the inconsistencies of globalization in its present form had been very well described by the speakers. Globalization exacerbated inequalities, tension and the militarization of societies so that, even from a strictly economic viewpoint, the results achieved were contrary to the actual objectives of globalization. For that reason, he would like to know whether Mr. Ricupero saw any development in the thinking of the multilateral organizations such as WTO or the International Monetary Fund (IMF) on that issue.

36. The CHAIRPERSON, replying to Mr. Guissé's comment, said that he had invited a representative of Africa, but that the person concerned had been unable to attend the discussion.

37. Mr. PREWARE, referring to Ms. Jilani's statement, said that he would like to know how the international community should react when States, citing reasons of internal security, resorted to armed force to crack down on every sign of opposition by the population.

38. Mr. Abi Saab had rightly pointed out that the rich did not mind making some concessions to keep a clear conscience and, above all, to avoid chaos, but they were not really prepared to change the system. In fact, it was the people demonstrating in the street who made the public aware that the system was unjust. He would therefore be interested to know whether Mr. Abi Saab defended the demonstrators' behaviour.

39. Mr. SORABJEE said that the recipient States were required to fulfil their obligations and assume their responsibilities; the question was which body was responsible for ensuring they did so. Was it in the Social Forum that institutions like the World Bank and IMF would conclude that States had honoured their commitments? Should an international ombudsman be set up? Were the financial institutions themselves responsible?

40. He was convinced that there were such things as universal values, but he thought that, in some areas, the financial institutions' policies were incompatible with respect for those values. He wondered whether there was any kind of consultation on that issue between recipient States and the international financial institutions.

41. Mr. FAN Guoxiang, referring to economic, social and cultural rights and their relationship with globalization, said he would like to know whether the experts thought priority should be given to human rights or to the promotion of economic development. The economic organizations had their own rules and, when those rules were not followed, it was difficult to make economic progress or improve living conditions. However, if human rights were not respected, economic development made no sense.

42. Mr. OLOKA-ONYANGO said that he wondered whether Mr. Clapham had any ideas on how to involve representatives of subregional institutions like the Association of South-East Asian Nations (ASEAN) in the Social Forum. Such institutions, which had direct links with countries, were not usually involved in discussions of that kind.

43. Following up on what Mr. Clapham and Ms. Jilani had said, he drew attention to the serious imbalance with regard to participation by civil society. He wondered how actors from civil society could be given a greater role, particularly in respect of violations of land rights and labour rights.

44. Mr. KOTHARI (Special Rapporteur on adequate housing) drew attention to his report to the Commission on Human Rights on adequate housing (E/CN.4/2001/51). He stressed the need in that regard to study the links between, on the one hand, the right to drinking water and the rights of indigenous peoples and their relationship to the land and, on the other, the right to adequate housing. The growing tendency to privatize land led to the marginalization of impoverished sectors, as shown by forcible evictions, discrimination, segregation and the fact that women's right to land was not respected. It was unlikely that those policies would change, given the reluctance of the international financial organizations to abandon their macroeconomic approach in favour of the realization of economic, social and cultural rights.

45. It was essential that the Social Forum should help change the international policies that led to such marginalization. In that respect, the emphasis should be on the collective work of the special rapporteurs and the United Nations treaty bodies. Joint meetings like the one on the impact of globalization on human rights held within the framework of the Commission on Human Rights in 2001 or the one that had brought together several rapporteurs, the Committee on Economic, Social and Cultural Rights and the International NGO Committee on Human Rights in Trade and Investment (INCHRITI) had led to the conclusion that all the mechanisms concerned could address a number of issues of interest to them all, especially issues such as the right to drinking water, the reduction of poverty and international cooperation. There was already a set of obligations in that area enshrined in international human rights instruments, but those obligations, which affected debt and structural adjustment policies in particular, were not taken seriously into consideration. There should be greater emphasis on solidarity and social justice. Care must also be taken to ensure that action by developed countries did not impede developing countries' ability to implement their commitments under those instruments. The Social Forum should also take into account the implications of such multilateral agreements as the General Agreement on Trade in Services (GATS) and the WTO agreements on trade-related aspects of intellectual property rights (TRIPS) and agriculture, as well as regional instruments such as the North American Free Trade Agreement (NAFTA) and the Free Trade Area of the Americas (FTAA). Lastly, it should take account of the important role of civil society, which was interested in models other than that of the globalized economy. In particular, it should try to strike up a dialogue with the forthcoming World Social Forum, to be held in Porto Alegre in February 2002.

46. Mr. HUNT (Rapporteur of the Committee on Economic, Social and Cultural Rights) said that the Committee on Economic, Social and Cultural Rights attached great importance to the Social Forum, the role of which should be to complement initiatives taken in other settings.

47. He recalled that the Committee's role was to establish a constructive dialogue with States parties, including within the framework of its concluding observations on their reports. The concluding observations always consisted of three elements: first, the Committee would welcome the positive initiatives, such as measures to reduce poverty, taken by the State party whose report was under consideration; second, the Committee would express concern at the gaps in the implementation of economic, social and cultural rights, such as unequal access to education for girls; and, lastly, the Committee would recommend measures to strengthen the implementation of those rights.

48. Another aspect of the Committee's work was the clarification and interpretation of the provisions of the International Covenant on Economic, Social and Cultural Rights, which it provided in its general comments and in its statements. The Committee's other role was to encourage dialogue with the specialized agencies.

49. As the eradication of poverty was currently the overriding objective of the United Nations, the role of the Social Forum could be to help identify best practices in that area, since such practices existed, but received no media coverage. By drawing attention to that subject, the Social Forum could inject a positive note into the debate on it and avoid the polarization that so often characterized such debate.

50. Mrs. ROBINSON (United Nations High Commissioner for Human Rights) welcomed the wealth of contributions to the debate. It seemed to her that three fundamental strands were beginning to emerge clearly. One was that participation in the discussions at the Social Forum should be truly representative, but without duplicating the work of other bodies. Another was that all those involved must unite behind a common objective; in her view, that objective should be the reduction of extreme poverty from a human rights perspective. Lastly, the Social Forum could set itself the task of identifying new issues in that area.

51. By "truly representative" participation, she meant participation by those who generally had no opportunity to be heard. The Social Forum should therefore find innovative ways to involve representatives of vulnerable groups, without ruling out the use of new technologies. The World Bank had some interesting experience in that area.

52. The Social Forum should also establish links between United Nations human rights activities and the forthcoming major international conferences, such as the International Conference on the Financing of Development, to be held in Monterrey, Mexico, in March 2002.

53. Lastly, the Social Forum should draw inspiration from the Millennium Declaration, in which the commitment was undertaken to give greater opportunities to the private sector, non-governmental organizations and civil society in general to contribute to the realization of the Organization's goals and programmes.

54. She took an extremely close interest in the Forum; the United Nations needed such a new meeting place for experts and the representatives of various institutions. She hoped that the current meeting would culminate in a working paper which would provide a starting point for the Social Forum when it met the following year.

55. Mr. SFEIR-YOUNIS (Special Representative of the World Bank) said that the Social Forum should become a unique platform where marginalized groups which were never given the chance to speak could have their voices heard. However, it was not clear what would make the Forum unique. To answer that question, the role of the Social Forum would have to be clearly defined in relation to the role of other institutions such as the Economic and Social Council and the Third Committee of the United Nations General Assembly. The answer depended basically on the approach selected by the Forum. In his view, the point of departure of the Social Forum should be the body of human rights instruments and practices, whereas, in other parts of the United Nations system, the realization of human rights took second place to other goals such as sustainable development, economic growth, globalization, governance and so on.

56. On the extremely complex and many-sided question of human rights and income distribution, the Social Forum should pose the problem not only in terms of legislation and regulation, but also in the wider context of human rights, equity and social justice. It should therefore go beyond purely economic concerns and focus on the social, institutional, cultural and political aspects or, in other words, take into account a large number of non-material dimensions contributing to unequal income distribution in most societies. An example of those non-material dimensions was the way societies assigned rights over productive assets or the way public goods were managed at the national and at the global levels. In that respect, as the Secretariat had

rightly suggested, the Social Forum should demonstrate great analytical rigour, which was particularly crucial as the issues it would be called on to examine were also being dealt with by other institutions.

57. In reply to the question he had been asked to answer on the uniqueness of the Social Forum, he said it was vital that the Social Forum should take a forward-looking approach to social policy-making. In other words, the Forum should avoid at all costs becoming an institutional body of the past.

58. He had a number of suggestions to make in that regard. The Social Forum should be a pluralistic and transparent body and should tackle the issues in a pragmatic, non-dogmatic way. It should be the body within which the social issues discussed at the global level from a political economist's viewpoint were analysed in all their complexity. In addition, it was very important that the analysis carried out by the Social Forum should have a fundamental impact on value systems, since the human dimension must be at the root of those systems. The Social Forum should also cover many of the debates taking place within the international community. In particular, it should cover the debate on international development goals. It was in that context that the Social Forum should see itself, rather than in the creation of a parallel structure. There was not the slightest doubt that the Millennium Declaration should be at the centre of the discussions in the Social Forum.

59. The Social Forum should be inclusive rather than exclusive, meaning that it should involve all groups in its discussions, including representatives of business as well as of minorities or indigenous peoples, to give but a few examples.

60. The Social Forum should become the most effective mechanism for creating new institutional and political spaces where the complex social issues facing countries - especially the issue of governance - would be addressed. It was known, for example, that, in matters of governance, the current structures were unsatisfactory, but the problem had not been analysed in depth. In other words, the Social Forum should become the cradle of a global social policy.

61. Lastly, the Social Forum should not be restricted to the legal and regulatory framework, including in the field of human rights. Development experience showed that such a framework was not sufficient and that some of the dimensions that tended to be ignored in the debate, such as economic and financial aspects, must be included.

62. He had been asked to suggest which two major issues should be given priority by the Social Forum in its future discussions. In his opinion, the first was the link between human rights and wealth creation and the social options available to attain goals in the area of equity and human rights. The second issue was the non-material dimensions of social policy, an issue that was too often ignored in the discussions.

63. In conclusion, what mankind needed at the moment was a new social architecture to complement the financial architecture and the development architecture. The quality of the Social Forum was directly related to the style it adopted at the start. If it limited itself to generalities, it would produce only generalities.

64. The actual discussions should focus on institutions; otherwise, they would remain abstract. The question of process was also very important, given the limitations that were bound to be encountered when trying to reach a consensus. The political economy of human rights played a fundamental role in that context.

65. Given the shortage of resources, economic issues should be at the heart of the discussions in the Social Forum. That did not mean that the economy had to dictate the final decisions, but that the goal should be the efficient allocation of resources. After all, one of the keys to progress in the area of social policy was the explicit recognition of the role of value systems and beliefs. Human rights should be the reference point for value systems.

66. Mr. SWEPSTON (International Labour Organization (ILO)) said that the ILO intended to be a proactive and steadfast partner in the Social Forum, which would provide an opportunity for bringing together widely varying points of view on the complex phenomenon of globalization, taking human rights as the reference point. As the High Commissioner had stressed, duplication must be avoided in the work of the Social Forum.

67. An ILO Governing Body working party was carrying out an in-depth analysis of the social dimension of globalization in the field of work. A major report on the issue would be produced in 2003, in which reference would be made to the experience of several other organizations, including the World Bank, IMF and WTO. The process of consulting with multilateral institutions, which would be pursued, could provide information and ideas of interest to the Social Forum. The Forum would have the advantage of not being tied to one part of the overall picture - unlike the ILO, which was interested only in certain rights and certain victims - and could take advantage of the monitoring activities carried out by the entire United Nations system and by others, to draw conclusions at the social level. Moreover, it would be able to help promote the implementation not only of the International Covenant on Economic, Social and Cultural Rights, but also of other important treaties. The Social Forum should also study the relationship between human rights and development by opening up discussions to actors from outside the United Nations system who were providing development aid so as to understand their reasoning and study the rules they applied.

68. Ms. FEENEY GRYLLS (Oxfam) said it would be dangerous if the Governments of the rich countries did not take into consideration the sense of frustration expressed in the anti-globalization protests. The Social Forum could provide an opportunity to analyse in depth the complex labyrinth of responsibilities, the consequences of the transfer of State powers to private companies, in terms of the victims' right to demand reparation, and the lack of transparency in trade and financial agreements signed without civil society having any say in those transactions.

69. She would like the Social Forum to study the problem of the incompatibility of the technical, economic and financial advice given by the international financial institutions with fundamental human rights standards and to consider preparing guidelines on recommended practices in that area. In particular, the activities of transnational corporations must be more strictly controlled so that the "losers" in globalization were not beholden to occasional philanthropic gestures. It would also be a good idea if the Social Forum were to pay attention to trade and investment agreements and look into the possibility of establishing safeguards in order

to correct the imbalance resulting from the priority given to foreign investors, especially with regard to intellectual property rights. The worrying question of the proliferation of new regional investment regimes, raised by Mr. Oloka-Onyango, should also be considered.

70. If the Social Forum was to avoid becoming a talking shop of no practical use, it would have to be open to civil society. Virtual conferences were no solution, as they left too many people on the sidelines, particularly those from African countries. It would therefore be a good idea for the Social Forum to go and meet people in the field and to take part in the major meetings held around the world, such as the next WTO ministerial meeting in Doha. It would also be a good idea for the Social Forum to review best practices in poverty reduction programmes.

71. Mr. CLAPHAM (Graduate Institute of International Studies in Geneva) said that, with regard to the participation of civil society in the Social Forum, he agreed with the representative of Oxfam that the Forum should be mobile. In particular, it should be present at regional and global meetings and in the regional United Nations offices and should be involved in the regional strategies of the High Commissioner for Human Rights. The Forum should also avoid focusing on the economic actors who were usually put in the dock and should instead focus on others who, though less well known, were also very influential.

72. Replying to the questions on the respective obligations of international organizations and recipient States, he said that States had human rights obligations and international organizations had to ensure that their activities were not going to prevent a recipient State from complying with the human rights treaties to which it had acceded. Even though they were not bound by human rights treaties, international organizations were responsible for unlawful acts committed by recipient States.

73. As for the question of whether multilateral institutions had an obligation to promote human rights, it was difficult to determine the scope of that obligation. The Social Forum would be able to answer that question only by analysing what the anti-globalization protesters expected of the multilateral actors, not by producing a legal framework. It was therefore important to ensure that the meetings of the Social Forum were open to as wide a range of participants as possible.

74. Mrs. WARZAZI said that the experts on the Sub-Commission who were from Africa made it their job to defend the interests of the peoples of that part of the world, who were often not taken sufficiently into consideration. She was therefore glad that Mr. Bengoa's initiative was becoming a reality, as the Social Forum would be an opportunity to give those peoples all the attention they deserved. Moreover, given the importance of the discussions, she would like a detailed summary record to be prepared and circulated to the Sub-Commission before the end of the session.

75. Mr. ABI SAAB (Appellate Body of the WTO Dispute Settlement Body), replying to Mr. Preware, said that the strategy of the rich to respond to the needs of the poorest with symbolic gestures could certainly not be used as an alibi for evading discussion on the functioning of the system in general. He certainly did not condemn the protests of the anti-globalization movement, as they had made people stop and think. Moreover, he found it

very encouraging to see citizens from the developed countries rally round a cause. Through them, the voice of others, especially people in the developing countries, had been heard.

76. With regard to the Social Forum, it was important to encourage non-State actors - transnational corporations and multilateral organizations - which were the driving force of economic activity, to engage in dialogue, so that they would become more aware of the importance of human rights and realize that, if they did not act responsibly, their activities would lose all legitimacy. With regard to budgetary policy, responsibility was not a question of governmental actors versus non-State actors, as that policy was still largely determined by the authorities. The Social Forum could help define responsibilities in that connection.

77. He agreed with the representative of Oxfam that the Social Forum should be results-oriented and should be open to people whose voice was not usually heard. It should not be satisfied just to define objectives, but should devise a transitional strategy to achieve them.

78. Ms. JILANI (Special Representative of the Secretary-General on the situation of human rights defenders) said that globalization gave rise to glaring inconsistencies. In fact, it could be seen that, while globalization was reducing the influence of States, the latter were still held responsible for the impact of the policies they were asked to implement. The multilateral institutions could not fail to see that contradiction.

79. As for the participation of civil society, she acknowledged that some of the doors behind which decisions were taken were closed, and that was why the Social Forum must not be content simply to identify problems, but must engage with the multilateral institutions. Those institutions were able to act as they did only because they found themselves in a favourable environment created by the States themselves. Control was theoretically possible, but States did not exercise it.

80. With regard to the "national security" argument used by some Governments to justify the crackdown on all forms of opposition, she recalled that article 22, paragraph 2, of the International Covenant on Civil and Political Rights allowed no restrictions on the right to freedom of association other than those necessary in a democratic society, while the Declaration on Human Rights Defenders did not even provide for reasons of national security or public safety to be invoked. Thus, anything that hindered the democratic functioning of a society was incompatible with respect for human rights.

81. Mr. RICUPERO (Secretary-General of UNCTAD) said he was in full agreement with the High Commissioner for Human Rights that the Social Forum should give those with no say in economic and financial decision-making an opportunity to speak out. Several of the questions put to him implied that the multilateral institutions were autonomous, but that was not the case: they were controlled by their member States and the decision-making process could differ considerably from one institution to another. Two thirds of the decision-making power in the economic and financial institutions was in the hands of the industrialized States. Consequently, greater participation by the developing countries in decision-making would require changes to the rules of procedure. In that respect, the Social Forum should seize the chance, when concrete

opportunities arose in the future, to discuss the rules on globalization. In addition, the Social Forum, through its involvement with the multilateral institutions, would be in a position to influence the way globalization evolved.

82. Mr. BENGOA welcomed the stimulating clash of ideas and views during the meeting and observed that the Social Forum raised high expectations that would be difficult to live up to. In any event, the procedure for considering issues would be extremely important. He proposed that a small group should meet informally before the end of the session to submit specific proposals for subjects that could become the main topics of the Social Forum.

83. The CHAIRPERSON thanked all the participants for their support and the experts invited to take part in the discussion for their contributions. He hoped that the cooperation with the multilateral institutions would be carried on.

The meeting rose at 6 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 August 2001, at 6 p.m.

Chairman: Mr. WEISSBRODT

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The meeting was called to order at 6 p.m.

ORGANIZATION OF WORK (agenda item 1) (continued)

Preparatory Meeting for the Social Forum (continued) (E/CN.4/Sub.2/2001/CRP.2 and 4)

1. Mr. OYARCE (Chile) said that the reason the Social Forum was so important to the Sub-Commission was that it would provide an opportunity for reflection on the spread of globalization and its impact on social and human rights. It would complement the debate on other aspects of globalization that was taking place in other bodies such as the International Labour Organization (ILO) Working Party on the Social Dimension of Globalization. It would be in a unique position to extend the work of non-State actors in economic, social and cultural rights, providing access to the debate for those who otherwise would not have such access. People were apprehensive and their concerns needed to be addressed.

2. The Social Forum would also make a more objective contribution to the discussion on economic, social and cultural rights by looking at legal issues and specific areas such as greater integration between financial and political systems. The idea of deciding on two subjects for discussion at the first session was very important.

3. The challenge to the Sub-Commission was to work with civil society and Governments to promote the initiative, which needed to be practical and operational, but required political and legal support.

4. Mr. KARTASHKIN said that one of the questions that ought to be discussed at the forthcoming Social Forum was the relationship between politics and economics, in broad terms, and, more specifically, the relationship between political rights and economic and social rights. Political instability and the lack of democratic institutions were detrimental to economic and social rights, while political stability in a society subject to the rule of law brought economic stability and the implementation of all kinds of economic and social rights, such as the right to land, which had been one of the questions raised in the panel discussion at the preceding meeting. In the Soviet Union, for example, there had been no way of dealing with the land issue for 70 years and it was only now being dealt with by democratic means.

5. As to the question of who should participate in the Social Forum, he believed the criterion should not be previous participation or non-participation, but, rather, expert knowledge of the issues. Participants should therefore include not only members of the Sub-Commission, but also members of relevant international governmental and non-governmental organizations.

6. The Social Forum would differ from previous forums in that it would undertake a complex, comprehensive investigation of all issues relating to social and economic rights and integrate the work of other organizations such as the ILO, the World Bank and the World Trade Organization (WTO). That was the only way to find answers to the expectations of the world community.

7. Mr. RODRIGUEZ CUADROS said that the Social Forum would not only make institutions and agencies more effective in promoting economic, social and cultural rights, but

would also help them with the planning that was necessary if those rights were to be properly monitored. However, in order to complement other forums that debated poverty, unequal distribution of income and the inequities arising from globalization, it must develop a framework of its own. That framework would be provided by a human rights approach, by which he meant a legal approach to the issues, emphasizing the concepts of obligation and responsibility, as opposed to a political approach far removed from the decision-making process. If the Social Forum was to bridge the gap between discussion and implementation, it had to discuss how to monitor States' policies and determine whether or not States were indeed meeting their obligations to implement economic, social and cultural rights. It must set a certain minimum standard or line below which States could not fall. An important question that arose in that context was the ability of States to negotiate with the financial institutions. For example, if a State's infant mortality rate was 22 per thousand and it was involved in negotiations with the International Monetary Fund (IMF) over reductions to the health budget that would entail cutting preventive programmes, it was necessary to determine what impact the policies agreed would have on infant mortality rates. Budgetary targets could be set and it would then be possible to establish policies that would help reduce infant mortality rates. Indicators of that kind would make it possible to set minimum standards for the realization of economic, social and cultural rights. Such working methods would provide a real line of defence for economic, social and cultural rights.

8. Mr. PARY (Indian Movement Tupaj Amaru) said that, since the panellists had left, there was little point in him making his statement. However, he wished to state for the record that the debate on the Social Forum had not been at all democratic. For example, no victims had been called upon to speak. As one of the victims of globalization and structural readjustment himself, he had brought testimony from the indigenous populations. A debate among experts from the World Bank and IMF excluded such people and even the Governments of the South.

9. The CHAIRPERSON encouraged the preceding speaker to submit his information to the Special Rapporteur so that he could take it into account in discussions on the next step in the preparations for the Social Forum. The Sub-Commission wanted to take account of all opinions.

10. Mr. CHAPMAN (Minority Rights Group) said the debate had reflected a desire to involve civil society in the workings of the Social Forum. He hoped that decisions on the working methods of the Social Forum would be taken in as transparent a manner as possible, with the continuing participation of civil society.

11. It had been said that the Social Forum should examine aspects of the impact of development and globalization on vulnerable groups and their enjoyment of economic, social and cultural rights. He urged the broadest possible participation of representatives of minority and indigenous NGOs in the Forum, by which he meant grass-roots NGOs rather than international organizations such as his own, since local NGOs generally had far less access to international forums.

12. A number of different models should be considered for the participation of civil society. The Working Groups on Minorities and on Indigenous Populations already offered such models, while the World Conferences offered a model of accreditation that allowed easier access than the Economic and Social Council accreditation process.

13. He wondered how themes would be dealt with: would there be different special themes from year to year or a number of core themes that would be considered every year? Whatever the system chosen, one of the themes should be the relationship between minority and indigenous groups and the enjoyment of economic, social and cultural rights, globalization and development.

14. Mr. NARVAEZ (World Federation of Trade Unions) said that workers, as the creators of wealth in every part of the world, and indigenous peoples, as ancestral owners of the world, must be directly invited to participate in the Social Forum.

15. Ms. PROUVEZ (International Commission of Jurists) said she agreed that it was vital for the Social Forum to include representatives of those segments of society that were usually not consulted or represented in international forums. She agreed with the suggestion by the representative of Oxfam at the preceding meeting that similar forums, which would be accessible to those who did not usually have such access, could be organized on other occasions in other parts of the world.

16. There were a number of themes the Social Forum should consider: the often negative effects of privatization policies and deregulation on economic, social and cultural rights in the former Soviet Union and eastern and central Europe; the effects of financial crises on the enjoyment of economic, social and cultural rights; the practical difficulties in implementing international standards of economic, social and cultural rights; and the need for new instruments and mechanisms, including the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

17. The Social Forum should also provide an opportunity for the exchange of examples of best practice and of lessons to be learned with regard to anti-poverty programmes and national policies to promote and protect economic, social and cultural rights in difficult situations.

18. Ms. BIONDI (International Confederation of Free Trade Unions), referring to section II, paragraph 8, of document E/CN.4/Sub.2/2001/CRP.2 said that the idea of following up agreements on social matters was a very interesting one. Recalling article 8 of the International Covenant on Economic, Social and Cultural Rights, she said that it was also important to include labour rights and trade unions in the debate. Reference should be made to the ILO Declaration on Fundamental Principles and Rights at Work, which obliged States to observe core labour standards even if they had not ratified the relevant conventions, simply by virtue of their membership of the ILO. As Mr. Ricupero, the UNCTAD Secretary-General, had said at the preceding meeting, certain topics would need thorough discussion, such as debt cancellation, WTO and development financing.

19. Mr. SANCHEZ (American Association of Jurists) said that there was not a great deal of social representation in the Social Forum. Judging by the number of United Nations bodies that would be participating, including the Sub-Commission, it would have time to take up only one item per session if there was to be any responsible discussion. AAJ suggested it should deal with external indebtedness at its first session, in 2002

20. Mr. PRAKASH (Indian Council of Education) said that it was important to take a balanced view of globalization. The private capital circulating in the world economy had created new opportunities and had destroyed old ones, thereby giving rise to both employment and unemployment in both the developing and the developed world. No institutional finance had been available to overcome the ill-effects of unemployment or to address the social security needs arising alongside the globalization processes. The Social Forum must therefore make efforts to persuade the international financial institutions to open special windows for Governments and industry. Increased mobility and flexibility for capital, which opened new vistas of industry and entrepreneurship, had to be matched by increased finance for labour, educational reform and economic security. Third World Governments, which had grown bloated within their protectionist economies, would also need help from international finance in their efforts at downsizing. In short, a holistic, multifaceted approach was needed rather than a one-sided approach from either industry or labour.

21. Ms. HAMPSON, referring to Mr. Rodriguez Cuadros' suggestion on standard-setting, said the Committee on Economic, Social and Cultural Rights had done considerable work in that regard. That Committee was basically concerned with reviewing State parties' reports in the light of the standards it had set, inter alia, in its general comments. The reason States failed to attain those standards, or indeed regressed, was sometimes that they encountered problems with other States. For example, development aid might be reduced on account of features of their system of government, even though change might not be appropriate at their current stage of development. Or they might be having problems in their relations with international financial institutions or with major corporations, although usually States in the developing world seemed to get on well with such corporations. In such cases, one possible function of the Social Forum, if the State party so wished, could be to use its good offices to seek a solution. It was not a matter of dispute settlement, but, rather, of facilitating discussion of a State's problem.

22. The CHAIRPERSON said that that concluded the special debate under agenda item 1.

OTHER HUMAN RIGHTS ISSUES (agenda item 6)

(c) OTHER ISSUES: PROMOTION AND CONSOLIDATION OF DEMOCRACY (E/CN.4/Sub.2/2001/32)

23. Mr. RODRIGUEZ CUADROS, introducing a working paper (E/CN.4/Sub.2/2001/32) prepared in accordance with Sub-Commission decision 2001/116 on the measures provided in the various international human rights instruments for the promotion and consolidation of democracy, said that, rather than discuss the definition of democracy or the history of the concept of democracy he had decided to base his approach on the analysis of trends in the promotion and consolidation of democracy through human rights in universal and regional instruments. An approach of that kind, which looked at binding legal and political obligations, would make it possible to see what elements were required to develop a legal regime to defend, promote and consolidate human rights.

24. The first part of the document dealt briefly with concepts that had already been established at the Vienna World Conference on Human Rights regarding the interrelationship between democracy and human rights. All human rights could be realized, promoted or violated

in any given State. The political and legal structure of the State could therefore either guarantee and promote the realization of human rights or, if in any way defective, violate or impair human rights. In other words, the political and legal structure of the State was a factor in the realization or violation of human rights. The paper made it clear that the concepts of the rule of law and of legal safeguards as the guarantee of human rights were enshrined in the Universal Declaration of Human Rights.

25. The paper went on to discuss the relationship between human rights and democracy as expressed in the relationship between the individual and society, and briefly reviewed developments in ways of promoting, defending and consolidating democracy in the past 20 years.

26. The paper also reviewed United Nations practice in promoting democracy at different times: first in the decolonization period leading up to the establishment of independent democratic societies, and then during the 1970s and later, as the United Nations had moved on from a tendency to deal with democracy almost solely from the standpoint of the right to self-determination towards much more specific undertakings and commitments, particularly with regard to electoral democracy and functional democracy, especially in the new or restored democracies.

27. Developments of the highest importance had taken place at the regional level. In the inter-American system, for example, democracy was a prerequisite for membership of the Organization of American States (OAS) and for participating in cooperation and integration activities in Latin America and the Caribbean. In recent years "democracy clauses" had been introduced, obliging countries to maintain their political regime within the rule of law, on pain of suspension of their rights within the regional community.

28. Recent developments in Africa included the creation of the African Union, which would eventually replace the Organization of African Unity (OAU). It promised to make a key contribution to democracy, democratic institutions and the rule of law within the African continent. Its Constitutive Act included a democracy clause, according to which Governments that came to power through unconstitutional means would not be allowed to take part in the activities of the Union.

29. There was thus a growing awareness of the existence of a right to democracy and an emerging international regime in which human rights and democracy intertwined, enabling legal provisions and standards to promote the establishment of mechanisms to preserve democracy. The resulting legal fabric provided a holistic framework within which to deal with economic, social and cultural rights more specifically. Democracy and the rule of law not only protected and guaranteed human rights, they also made it possible gradually to imbue the population with those values and principles.

30. The paper dealt with situations that were not subject to geographical limitations and could arise in any society, depending on the quality of its democratic institutions, and might therefore affect fundamental freedoms and human rights. Corruption in particular, if it became widespread, greatly affected the enjoyment of human rights, eroding the independence of the judiciary and the democratic principles of the population.

31. A number of tentative preliminary conclusions were contained in the working paper, of which the Sub-Commission might wish to discuss a final version at its next session.

PREVENTION OF DISCRIMINATION

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES.

(agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 16, 17 and 21; E/CN.4/Sub.2/2001/AC.4/6);

32. Mr. PREWARE congratulated Mrs. Daes on her work on indigenous peoples and minorities over the years. He, like many others, hoped that she would continue with that work.

33. As her report (E/CN.4/Sub.2/2001/21) stated, land was central to the very existence of indigenous peoples and was therefore very often at the heart of the problems faced by such peoples. Friction generally arose from differences in the value systems of indigenous peoples and nation States. As paragraph 22 of the report showed, the clash of cultures had been devastating. The report rightly addressed the issues from the standpoint of the human rights principles embodied in the Universal Declaration of Human Rights, the International Covenants and other international conventions.

34. The earliest efforts to protect the rights of indigenous peoples had been based on what Mrs. Daes termed "naturalist" theories. The international law that had developed from those theories was, however, fundamentally Eurocentric and restricted rather than strengthened indigenous peoples' rights to land and resources. Was there then any hope that they could obtain fairness and justice? The report suggested that the answer must be yes. Despite a number of reverses in the decisions of some national courts, which demonstrated the influence that Eurocentrist and discriminatory ideas continued to exert, Governments had begun to enact legislation and establish mechanisms to address the issues of land rights, inequality before the law, poverty and the participation and development of indigenous peoples.

35. The guiding principles and recommendations outlined in paragraphs 144 to 164 of the report all hinged on respect for fundamental human rights, dialogue and negotiation mechanisms, as well as monitoring capacity. The suggestion for the appointment of a special rapporteur with peace-seeking powers, in particular, was a bold one that the Sub-Commission should examine in greater detail.

36. Mr. JANSASOY (Foodfirst Information Action Network) said the indigenous peoples of Colombia were in a very dangerous situation because of violations of their basic political, social and even spiritual rights. With civil war having been declared on them in the last two years by the paramilitary and guerrilla armies, indigenous peoples were victims in their own areas. The introduction of Plan Colombia had taken human rights violations to new levels. The spraying of

traditional crops had led to the displacement of more than 2,800 people, threatened indigenous peoples' health and undermined their control over their territory and was also a threat to their spiritual life. He therefore requested the international community to call for an end to the forcible destruction policy. The United States Congress should send the Department of State to see what impact the policy was having on the environment. With the amount of money that was being spent, it must be possible to institute proper consultation mechanisms and protective measures, particularly for the Amazon Indians. The right to a healthy environment and due process of law for indigenous populations must be upheld.

37. Mr. KOK KSOR (Transnational Radical Party) said that his people, indigenous Montagnards from the central highlands of Viet Nam, had been subjected to 26 years of religious persecution, human rights violations and confiscation of ancestral lands, in revenge for their support for the United States army during the Viet Nam war. The Government had forcibly relocated villages to inferior land to make way for coffee plantations, logging operations and transmigration policies. People had been imprisoned, tortured and even executed for practising Christianity. The children suffered from malnutrition and women had been forcibly sterilized. Independent human rights organizations had documented the violations and the United States Government had called for independent monitors to be granted access to the region.

38. In February 2001, thousands of Montagnards had demonstrated peacefully to demand respect for their human rights. The Government had responded with a military crackdown using thousands of armed troops, tanks and helicopter gunships. Hundreds of his people had been arrested, tortured and executed, churches had been burnt down and villages occupied. Human rights organizations had confirmed that Viet Nam had offered bounties to the Cambodian authorities for the capture of those who had fled and many had been forcibly returned to Viet Nam to face imprisonment and torture. The fate of hundreds of refugees in Cambodia remained in doubt as Viet Nam had rejected United Nations proposals for their safe return.

39. He asked the Sub-Commission and the international community to take emergency action to intervene, to safeguard the refugees in Cambodia and to make the Vietnamese Government comply with human rights law.

40. Ms. SPALDING (World Federation for Mental Health) said that indigenous peoples around the world implored the Sub-Commission to ensure that the Working Group on Indigenous Populations continued its crucial work. The new Permanent Forum on Indigenous Issues had a different mandate. Mrs. Daes' report clearly demonstrated the vitality and uniqueness of the Working Group; if it was phased out, indigenous peoples would be deprived of an essential forum for the serious study of issues that could then be submitted to the Sub-Commission. Youth from around the world attending the Youth Empowerment Summit (YES) in Geneva, who had taken part in the initial Indigenous Peoples Pre-Caucus and later as NGO observers in the Working Group, had called for the continuation of the Working Group. She hoped their call would be heard by those responsible for making such an important decision, which might shape the future of the world.

41. Ms. SANCHEZ (Public Services International) said that PSI continued to promote equal opportunity in the workplace and to oppose all forms of discrimination. Indigenous peoples had proved to be an important part of trade union struggle in pursuit of that aim and public service

trade unions, in particular, as providers of services to indigenous peoples, should play a more responsible role in the promotion of their rights. PSI therefore urged its affiliates in countries and regions to develop and implement action plans to establish and maintain relationships between indigenous peoples and trade unions and particularly to promote the employment of indigenous peoples. They should work to encourage Governments to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

42. No workers should face discrimination because they were different from the dominant group and PSI was committed to eliminating such exclusion. PSI affiliates actively supported indigenous peoples by negotiating equity in workplaces where there was discrimination: some had negotiated expansion of leave to accommodate the traditions of aboriginal workers or leave of absence without pay for traditional economic activities, while others had won contract language providing aboriginals with preference in promotions, transfers and training, to ensure equitable representation and distribution in the workforce.

43. Mr. LEBLANC (Franciscans International) welcomed the creation of the Permanent Forum on Indigenous Issues and the appointment of a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. He commended Mrs. Daes' reports and paid tribute to her work as Chairperson of the Working Group on Indigenous Populations, which had helped create greater understanding of indigenous issues within the United Nations system.

44. Referring to the discussion of relocation in the working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21, paras. 70-72), he said that members of his organization working in the field had seen many specific examples of displacement of vulnerable groups and encroachment on their land in the name of development. The tribal people in the State of Jarkhand in India, for example, had for 30 years been mounting non-violent resistance to the Koel-Karo dam mega-project, which threatened to submerge villages and displace more than 100,000 persons, 70 per cent of them tribal peoples. In Bangladesh, there were protests at plans for an "Ecopark" to be built in forest land traditionally inhabited by indigenous tribal peoples. He also continued to be concerned about the situation of indigenous peoples in Mexico, who faced systemic human rights problems, the recent political developments in the country notwithstanding. One of their long-standing demands was for the right to ensure that programmes were not incompatible with their culture in terms of the use of natural resources and to designate their authorities in the traditional manner. Their situation illustrated the ongoing challenges facing Governments and society in achieving equity and justice for all.

45. Member States of the United Nations should take the Special Rapporteur's recommendations on urgent and effective action seriously if the violations of today were not to escalate into the conflict of tomorrow.

46. Ms. HASEGAWA (Shimin Gaiko Centre) said that, on 2 July 2001, two influential members of the Japanese parliament had stated, in separate venues, that Japan was an ethnically homogeneous nation. One of those statements had been particularly offensive to Japan's indigenous people because it had been made by a former director of the Japanese Government's Hokkaido-Okinawa Development Agency, who was certainly aware of the existence of the Uchinanchu and Ainu as distinct peoples. Japan's lack of domestic laws on racial or ethnic

discrimination allowed government officials to make such statements with impunity. It was time for the international community to establish mechanisms that would ensure the enforcement of the provisions of international law. For indigenous peoples in Japan and throughout Asia and Africa, the struggle for indigenous rights included the demand that Governments should recognize the identity of indigenous peoples. She called on the Japanese Government to acknowledge that the statements had been not only untrue, but also discriminatory and ethnocentric.

47. Mr. PARY (Indian Movement Tupaj Amaru) said that central to the debate at the World Conference against Racism would be the acknowledgement of colonialism as the main cause of racism and the issue of compensation for its victims. It was essential to examine the forms of social organization that had marginalized aboriginal populations, thereby destroying ancient wisdom and culture and wiping historic communities off the face of the earth, to the great sorrow of those who had lost the memory of their ancestors. Those that had survived such genocides had been condemned to slavery and forced labour to the end of their days. The most inhuman form of slavery had been that which had made of the Indians mere chattels to be bought and sold, traded by land and sea. Incalculable amounts of gold and silver had been extracted and sent back to the Spanish crown, enormous wealth sucked from the lungs of the Americas, leaving behind an economy of lack. The former metropolitan States and the new colonial powers should assume their historic political and moral responsibility, examine their consciences and their ethnocentric policies with their expansionist colonial connotations and apologize to the millions of victims.

48. Ms. Song HESUK (Indian Movement Tupaj Amaru) said that more than 230 members of the Korean minority in Kyoto prefecture in Japan, who had originally been evicted from their homes in Korea to work as forced labour in munitions factories and mines during the colonial period, had settled in Japan and were now about to be evicted from their homes again. The concept of reparation and compensation for victims of the colonial system took on an urgent relevance in that situation. She strongly requested the Sub-Commission to take all necessary measures to protect and promote the human rights of the victims of colonialism, including Korean minorities in Japan.

49. Ms. DI POGGIO (International League for the Rights and the Liberation of Peoples) said that Mrs. Daes' report (E/CN.4/Sub.2/2001/21) drew attention to the many failures of States in their policies towards indigenous peoples. Those failures were reminders of rights violated, rights spelt out in the draft declaration on the rights of indigenous people. Were the draft declaration at long last to be adopted, there would be no more failures and justice would be done.

50. Though indigenous peoples constituted only around 5 per cent of the world population, they represented roughly 90 per cent of the world's cultural diversity and 80 per cent of the world's biodiversity was to be found in indigenous peoples' territories. Nevertheless, for the sake of short-term financial gain, business and industry pressed Governments to oppose, weaken or disregard legal frameworks and international standards aimed at protecting and enhancing indigenous peoples' rights, particularly the right to land. Their spiritual, cultural and social values and close relationship with the natural world were thus traded for the benefit of the richer regions of the world and at the expense of the global environment.

51. The recent approval of the United States National Energy Security Act, which would allow petroleum exploration in the Arctic national wildlife refuge in Alaska, amounted to a death sentence for the Gwich'in nation. The coastal plain that the Gwich'in called "the sacred place where life begins" was the biological heart of Arctic wildlife and the calving grounds of the Porcupine caribou herd, on which the Gwich'in depended to meet their physical and spiritual needs. It constituted a legacy of paramount importance for future generations that would be lost forever if the natural food chain was disrupted by the oil operations.

52. In Chiapas, indigenous peoples were still waiting for President Fox to offer them a meaningful solution to a dispute that centred, yet again, on the rightful use and ownership by indigenous peoples of their forests and natural resources, which had been pilfered and exploited by multinationals for their experiments on genetically modified organisms. Since DuPont's application for a patent on a genetically modified corn maize very similar to a Mexican variety, for example, peasants could no longer use some local seeds. In the United States, the Western Shoshone people were still denied the rightful possession and enjoyment of their ancestral lands, in accordance with their traditional lifestyle, despite a treaty of peace and friendship with the Government. Goldmining continued to destroy their land and pollute their water and no ban had yet been placed on nuclear waste dumping or missile testing.

53. No right was more important for indigenous peoples than the right to self-determination, as expressed in article 3 of the draft declaration. However, the very notion of self-determination needed updating, since it was still being interpreted as restrictively as it had been during the decolonization period. She called for the question to be placed on the Sub-Commission's agenda.

54. Mr. IBARRA (International Indian Treaty Council) said there was an enormous gap between the undeniable progress made in the legal and philosophical debate over the rights of indigenous peoples around the world and the stagnation or regression in the exercise of human rights and fundamental freedoms. Moreover, racism was enjoying a renaissance, sometimes surfacing in the guise of democracy, development or progress, sometimes camouflaged among percentages, statistics and fallacious reports.

55. There was cause for grave concern in Mexico, where the timid hopes for improvement following the elections had been dashed by continuing systematic violations of the human rights and fundamental freedoms of indigenous peoples, political persecution and the military use of indigenous lands. Recent legislation and government action had restricted basic rights enshrined in the international instruments to which Mexico was a party. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people should therefore concentrate first on the situation of indigenous peoples in Mexico.

56. More than 10 years since the end of the military dictatorship, Chile was one of the most backward countries in terms of indigenous peoples' rights and its Constitution still did not recognize their legal, physical or cultural existence. It had not ratified ILO Convention No 169, despite the pledges made in every presidential campaign. There had been no changes in favour of the indigenous peoples in economic, forestry, mining, water or agricultural policies since the dictatorship. There were no policies or legislation to promote multi-ethnicity, indigenous artistic creation or spiritual life or indigenous peoples' effective enjoyment of human rights and

fundamental freedoms; there were no programmes to combat discrimination and no government will to accept and implement any of the recommendations or suggestions made by the Committee on the Elimination of Racial Discrimination or the Human Rights Committee. Unemployment, malnutrition and infant mortality were higher in municipalities with large indigenous populations than anywhere else in the country. If the Sub-Commission wished to adopt a resolution on the situation of indigenous peoples in Chile, it need only reiterate some of the resolutions it had adopted during the period of the military dictatorship.

57. Mr. GOMEZ ROBLEDO VERDUZCO said he hoped that Mr. Ibarra would be more objective in his observations on Mexico in the future.

58. Mr. KARTASHKIN said that Mrs. Daes' very impressive report (E/CN/4/Sub.2/2001/21) was distinguished by its exhaustive conclusions and recommendations and the basic guiding principles on policy concerning the lands and territories of indigenous peoples. The annex containing the basic legal documents affecting indigenous peoples and their connection with the land mentioned ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. He wondered why so many countries where indigenous peoples lived had not ratified that Convention and what prevented them from doing so. Answers to that question might further enrich an already valuable report.

59. Mr. EIDE said that he endorsed paragraph 155 of the report of the Working Group on Indigenous Populations on its nineteenth session (E/CN.4/Sub.2/2001/17) and noted with satisfaction that Mrs. Daes had been invited to continue working on the subject and to submit a paper on the contributions of indigenous peoples to the United Nations.

60. He welcomed the invitations extended to Mr. Alfonso Martínez to prepare a working paper on indigenous peoples' relationship to natural resource, energy and mining companies, and to Ms. Motoc to prepare a working paper on the consequences of biotechnology on indigenous peoples. He also welcomed the increasing attention being paid to indigenous groups and populations in Africa, as indicated by recent seminars in Arusha and in Mali, and by the establishment by the African Commission on Human Rights of a working group on indigenous peoples. Such developments indicated that the issue of indigenous peoples was becoming global in scope.

61. Mrs. DAES expressed her gratitude to the members of Sub-Commission and representatives of NGOs for their kind words and support.

62. She was pleased to report that, at meetings of the working group of the Inter-American Commission on Human Rights, held in Washington D.C. in March 2001, the United States had formally declared that it would recognize the internal self-determination of indigenous peoples; and the working group had accepted a proposal made by an indigenous representative from Canada that the working group on a new draft declaration on indigenous rights should use the term "peoples", with an "s".

63. Responding to Mr. Kartashkin's question, she said she believed the reason some countries had not ratified ILO Convention No. 169 was that the process took time because studies had to be done on the effect of ratification on economic, political and social interests. However, the Convention was known and quoted worldwide.

64. Lastly, she said that she had aimed in her report to present certain ideas and solutions to problems that were of vital importance, not only to indigenous peoples, but also to Governments and States themselves. It was important for States to make indigenous peoples equal partners and to give them the opportunity to participate in economic, social and cultural development. It was in the interests of both States and the international community to respect the intellectual and physical work of indigenous peoples, which would ultimately benefit their economies.

65. Mr. TOTSUKA (Japan Fellowship of Reconciliation) said that JFOR had been established to achieve eternal peace and human rights through non-violent means. Stressing that JFOR prioritized human rights education, he drew attention to certain difficulties regarding the World Conference against Racism Web site. While JFOR appreciated the work of the Office of the High Commissioner for Human Rights in developing a site containing vital information on the World Conference, many highly educated people and officials in Japan and many other countries were excluded from practical access to that information because they could not read any official United Nations language. The right to human rights information was guaranteed under instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and JFOR requested that the High Commissioner should make every effort to solve such language problems.

66. Human rights education involved teaching children and the public about painful episodes of history. Governments had a vital role to play in that process. They should condemn human rights violations and violations of humanitarian law committed during colonial periods, since racism and intolerance had been closely linked to such events in the past. It was therefore regrettable that the Japanese Government had recently approved a new school history textbook that glossed over wartime atrocities and made no mention of the sexual slavery of many Asian women in Japanese former colonies and occupied territory. Despite strenuous objections from North and South Korea and China, the Japanese Government had refused to correct the textbook. It was equally regrettable that, despite harsh criticism, the Japanese Prime Minister had recently insisted on paying tribute to war criminals at the Yasukuni shrine.

67. Mr. PITTS (Minnesota Advocates for Human Rights) said that racism was often overlooked, for example, in vital statistics such as infant mortality rates, which could be an important indirect indicator of racism and racial discrimination. In the United States, African American and Native American communities had the highest infant mortality rates, while white infants had the lowest rates. His organization believed that disproportionate death rates of minority infants was the result of discrimination in the provision of a wide range of services such as medical care, housing, education and employment. The development and promulgation of accepted statistical indicators for such key statistics as infant mortality would be of great use in the monitoring, implementation and eventual elimination of persistent human rights violations such as racism.

68. He welcomed the efforts that had gone into the drafting of the documents adopted at the third Preparatory Committee for the World Conference on Racism. However, they lacked some of the general, overarching principles that were fundamental to combating racial discrimination and relevant human rights standards, a problem that might undermine the documents' validity. The draft text should cite the principal human rights instruments and standards relating to racism and the relevant provisions of the United Nations Charter. The language of the international covenants, prohibiting discrimination on the basis of race, ethnic origin, birth or other status, made it clear that oppressive social regimes such as the caste system were appropriate subjects for the World Conference. Both on the formal legal level, for States that had yet to enact legislation, and in terms of protections on the ground, the caste issue remained one of the most important human rights issues in the world today.

69. Secondly, the World Conference should make a strong statement acknowledging racial non-discrimination as jus cogens, i.e. a peremptory norm of international law that was not subject to derogation by any State. Third, it should adopt the very broad definition of racial discrimination contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination in order to make it clear that all forms of racial discrimination were recognized and should be prohibited. It should also reiterate the acceptability under international law of special measures or affirmative action to correct the ongoing legacies of past discrimination.

70. Lastly, he said it was imperative that the final text should include effective follow-up mechanisms. The work of standard-setting had largely been completed and the work of implementation must now be pursued with greater vigour. While overt racial discrimination was becoming less acceptable in the international community, certain forms of it persisted and new types of more covert racism were emerging.

71. Ms. BIONDI (International Confederation of Free Trade Unions) said there was a frightening level of racism and racial discrimination in the workplace and the labour market. Although often perceived as static and conservative bodies, trade unions frequently took the lead in raising awareness of the problem and addressing the issues through innovative strategies, as part of their struggle for freedom and social justice for all. Activities included special campaigns and training programmes for shop stewards and the membership at large, structural reform to encourage the participation of diverse groups and the defence of victims of racism in the workplace and in the labour market. Above all, trade unions were urging employers to adopt equal opportunities policies in order to combat racial discrimination and negotiating practical measures in collective agreements aimed at ensuring equal opportunities for migrants, workers of colour and indigenous and ethnic minorities.

72. Trade unions also worked with Governments and employers for the development of bias-free national standards of assessment for various professions and occupations. They lobbied for proactive labour legislation on equity and pay, for the burden of proof to be placed on employers in the case of companies accused of discrimination and for the establishment of specific career development programmes for workers of colour, indigenous people and ethnic minorities, in order to prepare them for promotion opportunities at all levels. ICFTU and its affiliates called on Governments to implement the key provisions of the International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families without delay, whether or not they had ratified it. Many workers in developed and developing countries were denied the right to form and join trade unions and were often forced to live on the margins of society.

73. Lastly, she said that the document adopted by the World Conference should contain a clear reference to the importance of observing the core labour standards enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, as an effective starting point for the elimination of all forms of racial discrimination and xenophobia. The document must constitute a platform for future avenues of work for the whole United Nations system.

74. Mr. AHSAN (World Federation of Democratic Youth) said that, as the largest ethnic and linguistic minority in Pakistan, the Mohajirs of Sindh province firmly believed in the principle of unity in diversity and were conscious of their responsibilities towards the national interests of the State. Yet they themselves were being subjected to discrimination and isolation in the urban centres of Sindh. The dominant Punjabi group was bent on denying the Mohajirs their right to preserve and protect their specific identity and character. A healthy democracy should carry minorities along with it, not through compulsion but through persuasion. But the Punjabi ethnic majority continued to display the same arrogance and hegemonic mentality that had split Pakistan in 1971. They had not learnt anything from that event. Census figures were made to show the Mohajir population at less than half its actual number, for example, and electoral constituencies were manipulated in order to deprive Mohajirs of their due representation in regional and national assemblies. One Mohajir political leader had recently been arrested. He requested the Sub-Commission to ensure that the human rights of the Mohajir ethnic group were fully protected and preserved by the Government of Pakistan.

75. Mr. GRAVES (Interfaith International) said the Sub-Commission should consider the issue of the sacralization of the State, i.e., the process of making the State into a semi-sacred entity. It was not a recent phenomenon, but it persisted even in modern, proudly secular Western countries that tended to integrate foreigners in such a way that the newcomers occupied a lowly, almost marginalized, position until they had adopted the prevailing values. Far right groups often took advantage of latent sacralization and accused newcomers of trying to change the national ethos or being a threat to national traditions.

76. The Sacralization of the State had also been practised in the colonial period and colonized people had been obliged, often by violent methods, to conform to the overriding cultural domination of the colonizers. The victims of colonization were demanding reparations not merely because they had been defeated by the colonial powers, but because they had been forced to submit to their philosophy.

77. The problem also occurred in some countries in the Asian subcontinent. Pakistan, for example, refused to recognize local cultural differences and the sacralization process could also be observed in India, which claimed to be an enlightened secular democratic state. The Sikh

community alleged that State-supported academics were attempting to prove that the Sikh religion was really a Hindu religion, a position the Sikhs strongly contested. The international community should be aware of the dangers menacing Sikhism and some other religions in India, including the traditional Buddhist culture in Assam, and indigenous traditions such as those of the Chittagong Hill people.

78. Certain States seemed reluctant to deal with the issue at the World Conference against Racism; they claimed it was over and done with. But in order to protect religious and ethnic minorities whose lives were made difficult today by a sacralized State, it was important to admit that some Western powers had been doing the same since the sixteenth century.

The meeting rose at 9 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

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(a) WOMEN AND HUMAN RIGHTS

(b) CONTEMPORARY FORMS OF SLAVERY

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The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15-19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6);

1. Ms. CHING (Amnesty International) said the right to be free from torture should not be denied to anyone in any circumstances and yet torture and inhuman treatment continued to be reported in over 150 countries.

2. Forms of discrimination such as racism, sexism and homophobia meant that certain people were particularly vulnerable to ill-treatment in police or prison custody and were less protected against crimes of violence in the street or the home. Discrimination in the criminal justice system could mean that victims of torture or inhuman treatment were denied the protection of the law, reinforcing the impunity of the perpetrators. Perceived differences of race, gender and sexual identity had long been seen as justifying efforts to exclude certain people from full membership of the human family, and the denial of a person's basic humanity was the first step towards killing, torture and inhuman treatment.

3. Many people experienced multiple discrimination based on a combination of factors, such as gender and caste or race and sexual orientation, and one form of discrimination could thus not be tackled in isolation from others. All forms of identity-based discrimination assaulted the very notion of human rights by denying that all human beings were equal in dignity and worth, and that was why international human rights law was grounded on the fundamental principle of non-discrimination.

4. While many efforts had been made within the United Nations system to address discrimination on grounds such as race or gender, her organization was concerned that other related forms of discrimination had received less attention. Ill-treatment of lesbian, gay or bisexual people was a widespread problem, but one which appeared to provoke little outrage: such cases were rarely documented, and when complaints were made they were frequently met with official indifference. She urged the human rights movement, including the United Nations human rights system, to guard against colluding with such a conspiracy of silence. In many cases, torture and other abuses of sexual minorities were justified by the authorities in the name of culture, religion, security or public morals.

5. She welcomed the interest shown in the subject by five special rapporteurs of the Commission on Human Rights, as well as the recent work by some of the treaty bodies on identity-based discrimination. In particular, she welcomed the reference to discrimination on the

basis of sexual orientation in the introduction to Mr. Pinheiro's working paper for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

6. Combating discrimination was an essential part of the fight against torture, and she called on the Sub-Commission to play a pioneering role in that regard.

7. Ms. MOTOC said she endorsed the views of those non-governmental organizations (NGOs) which had urged that the Working Group on Indigenous Populations should continue its activities. She hoped, that in future, the Group would be able to deal with the question of minorities in a somewhat less academic way and would be able to interact more closely with the populations concerned.

8. Ms. FANG (Asian Women's Human Rights Council) said that, following the Japanese colonization of Korea, systematic discrimination had been practised against Korean residents in Japan, and such discrimination still continued. Pupils attending Korean schools and wearing Korean national costume were often the targets of verbal and physical abuse, but the Government took no effective measures to halt it. In March of that year, the Committee on the Elimination of Racial Discrimination (CERD), in its concluding observations, had expressed concern at that situation and had recommended that the Government should adopt more resolute measures to prevent and counter such acts. Korean students also suffered from systematic discrimination with regard to their qualifications for university entrance and eligibility for financial support.

9. The Japanese Government should acknowledge its responsibility for both past and current wrongdoing in respect of the Koreans. Protection of the dignity of ethnic minorities was an essential part of the protection of human rights generally, and she urged the Sub-Commission to address the issue and to make an appropriate request to the Government of Japan.

10. Mr. GHULAM MUHAMMAD (International Islamic Federation of Student Organizations), referring to paragraph 78 of the report of the Working Group on Minorities on its seventh session (E/CN.4/Sub.2/2001/22), said he agreed that "internal" self-determination or autonomy could meet the demands of minorities who sought a redress of their grievances within the constitutional framework of their own country, while external self-determination could meet the demands of the people of disputed or occupied territories. It was unfortunate that the Dalits, who were seeking an end to decades of discrimination, humiliation and suffering, were meeting a similar fate to those resisting an occupying Power. Activists were jailed to prevent them from holding meetings and protest rallies, and charged with terrorism or with threatening national security.

11. The plight of Indian Muslims, Christians, Sikhs and Dalits had been brought to the attention of the Sub-Commission by a number of NGOs. In particular, the Working Group on Minorities should consider two reports by Human Rights Watch, one on the subject of India's hidden apartheid and the other on the subject of its secret army. Lastly, he endorsed the comments by Mr. Kartashkin, contained in paragraph 88 of the report, concerning the experience gained in respect of ethnic autonomy in the Russian Federation.

12. Mr. NORWOOD (Pax Romana) drew attention to article 2, paragraph 3, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which stated that persons belonging to minorities had the right to participate effectively in decisions at the national and regional levels concerning the minority to which they belonged. More than half of the 180,000 rejected ballots in the State of Florida in the 2000 presidential election had been African-American votes. Although the African-American turnout in Florida had been 65 per cent higher than for the previous presidential election in 1996, 14.4 per cent of black voters had cast ballots that were rejected as compared with approximately 1.6 per cent of non-black Florida voters.

13. The list of persons disqualified from voting, supplied by a private company, had been riddled with inaccuracies, again disproportionately penalizing African-Americans. Poor counties, particularly those with large minority populations, were more likely to possess voting systems with high rejection rates than more affluent counties with significant white populations, an example of the covert racism that still persisted. Such irregularities were not confined to Florida, but were found throughout the United States of America

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14. The fact that the current administration was not responsive to black issues was demonstrated by the position adopted by the United States delegation in the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The disenfranchisement of peoples of African descent was a matter of extreme concern to the African-American community, and also, it was to be hoped, to the international community as a whole. He urged the Sub-Commission to undertake a study on the effective participation of peoples of African descent in decisions concerning them in all parts of the world.

15. The working paper prepared by Mr. Goonesekere on discrimination based on work and descent (E/CN.4/Sub.2/2001/16) marked an important stage in the progress towards the elimination of racial discrimination. His organization was concerned that the Dalits in India continued to suffer multiple discrimination on account of their work and descent and that, although laws were in place, there was a clear lack of will to enforce them. He appealed to the Sub-Commission to continue its work on the subject, since its recommendations would effectively enhance the programme of action of the World Conference.

16. Lastly, he welcomed Mr. Weissbrodt's preliminary report on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1), and wished to draw particular attention to the case of non-citizen indigenous children in Thailand, who received no certification on completion of their studies at the age of 12 and were thus barred from further studies and from gainful employment. That situation should be taken up by the Sub-Commission, in view of the fact that Thailand had ratified the Convention on the Rights of the Child.

17. Mr. EIDE, Chairperson-Rapporteur of the Working Group on Minorities, said that he would encourage organizations representing African-Americans to prepare working papers for submission to the Working Group, so that it could address their concerns.

18. Mr. MAXIM (Observer for Romania) said that, on 19 June 2001, the Hungarian Parliament had adopted a law concerning Hungarians living in the neighbouring countries of

Croatia, the Federal Republic of Yugoslavia, Romania, Slovenia, Slovakia and the Ukraine. Under that law, the ethnic Hungarians concerned would benefit from assistance in education, science and culture, notably in the form of scholarships, social security provision and medical services, and would receive subsidies for travel and for training in Hungary and other countries as well as help in obtaining employment. Such benefits were accessible to persons in possession of a certificate confirming their Hungarian nationality, issued by the Hungarian authorities.

19. His Government considered that the Law introduced positive discrimination in favour of one of Romania's minorities, to the detriment of the majority of the population and the other minorities. Positive discrimination was generally allowed only as a temporary measure, whereas the Law was effective for an indeterminate period. He pointed out that, under a bilateral treaty of 1996 between Romania and Hungary, citizens belonging to national minorities had the same rights and duties as citizens belonging to the majority population. The Law of 2001 had been adopted by Hungary without consultation with Romania, and its provisions went well beyond established European standards in the area of protection of national minorities, notably those adopted within the framework of the Council of Europe.

20. Mr. ANOSHKO (Observer for Belarus) said that Belarus, which was a party to the International Convention on the Elimination of All Forms of Racial Discrimination, considered that one of the most crucial tasks of the United Nations was to promote respect for fundamental rights and freedoms regardless of race or ethnic origin. Belarus was a multinational State, which included Ukrainians, Russians, Latvians and Tartars, but it was unique in that all the minority groups coexisted in harmony and there had been no instances of internal strife. It was the policy of the Government to implement legislation guaranteeing full equality for all members of society: in particular, political parties seeking to disseminate racial hatred were banned, and associations furthering the language and culture of minority groups were encouraged.

21. Belarus had suffered under the Nazi regime, and therefore viewed with great concern the rise of neo-Nazi movements in Western Europe which, it was glad to note, had been condemned by the General Assembly. It attached great importance to the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which it saw as a landmark in the progress towards the elimination of discrimination.

Statements in exercise of the right of reply

22. Mr. SUNGAR (Observer for Turkey), noting the continuing concern shown by Ms. Hampson with regard to developments in Turkey, said that additional information seemed to be required to avoid a biased stereotyping of the demographic structure and constitutional order of his country. It was incorrect that all the victims in cases where Turkey had been found guilty of killings and torture by the European Court of Human Rights were of Kurdish origin. Consequently, the conclusions Ms. Hampson had drawn from her statistics were also incorrect.

23. The Turkish State recognized a multitude of ethnic, religious and cultural identities, and did not attempt to impose any single model. Professor Peter Andrews, a former professor of anthropology at the University of Cologne, Germany, had found that 47 different ethnic groups existed in Turkey, and that they were all mixed both geographically and socially.

24. His country was proud of its mixed cultural, ethnic and religious heritage. All Turkish citizens were treated equally before the law, and were not subject to any discrimination with regard to their statutory rights. Referring to the statement already made by his delegation under agenda item 2, he said that the improvement in human rights in Turkey was an irreversible process. It was untrue that the remaining deficiencies were directed at any particular group of people.

25. Mr. SAWMY (Observer for Mauritius) said, with reference to a statement made by an NGO concerning the Chagos Archipelago, that the territory had been unlawfully annexed by the United Kingdom, in violation of a series of United Nations resolutions, before Mauritius had gained its independence. The inhabitants of the Chagos Archipelago, who were also Mauritian citizens, had been forcibly displaced and prevented from returning to their homes in what had always been an integral part of Mauritian territory. At the United Nations General Assembly in 2000, his Government had reiterated its demand for its citizens to be allowed to return to the Archipelago. It would continue to monitor any attempts to infringe upon its sovereignty.

26. Mr. LAKATOS (Observer for Hungary), responding to the comments made by the observer for Romania, said that forward-looking and historic decisions were often misunderstood when they were first announced. The Law adopted on 19 June 2001 by the Hungarian Parliament was no exception. Despite his Government's willingness to enter into a dialogue on issues related to the implementation of the Law, several misinterpretations appeared to remain.

27. The Law was designed to preserve the linguistic and cultural identity of Hungarians living in the neighbouring countries, through the provision of benefits and assistance made available on application. It constituted an example of positive affirmative action, designed to compensate minorities for their disadvantaged situation. While the basic treaties of the European Union contained a ban on arbitrary discrimination between persons, support for minorities did not constitute discrimination.

28. The Law in question provided assistance to persons on the basis of their freely embraced linguistic and cultural identity, and not on the basis of origin or ethnicity. It was not inconsistent with any of the laws of the countries affected, and the Hungarian authorities would not engage in any administrative acts outside their own sovereign territory. Other countries in the region, including Romania, Croatia and Poland, had already introduced similar schemes aimed at the preservation of the identity of citizens in other States. The real beneficiaries of the Law would be the neighbouring countries themselves, which would enjoy the enriching impact of cultural diversity. The objective was consistent with his country's vision of a Europe united in its diversity.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)

29. Mr. GUISSÉ, presenting the report of the sessional working group to examine the working methods and activities of transnational corporations, said that papers written by himself, Mr. Weissbrodt and Mr. Eide had been considered by the group. His own paper had focused on the impact of the activities of transnational corporations on human rights, and the division of responsibilities between the corporations and the States in which they were based. Mr. Weissbrodt had done the preparatory work for the development of guidelines for

transnational corporations on their impact on human rights. In the course of a lively debate, he had invited all interested parties to contribute their suggestions. Most participants had agreed that the guidelines should be used to elaborate legally binding rules, provided that they were not inconsistent with the existing human rights instruments. Many speakers suggested that, in view of the difficulty of defining a transnational corporation, the rules should also apply to domestic companies. Mr. Eide had submitted an important study on the modalities of implementing such rules and ensuring that States complied with their responsibilities.

30. The working group had heard statements by a number of Sub-Commission experts, as well as by representatives of international organizations and NGOs and he expressed his appreciation of the range of contributions. The working group had asked for a further three years to be added to its original mandate, so that its experts could continue the work they had begun. They intended to consider all the legal, economic and social issues concerning transnational corporations, with a view to drawing up a legally binding set of rules on their impact on human rights.

OTHER HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS;

(b) CONTEMPORARY FORMS OF SLAVERY;

(c) OTHER ISSUES

(agenda item 6) (E/CN.4/Sub.2/2001/4, 23, 24 and 26-32; E/CN.4/Sub.2/2001/NGO/23 and 24; E/CN.4/2001/82 and Add.1 and 96)

31. Ms. KOUFA, Special Rapporteur on terrorism and human rights, introducing her progress report (E/CN.4/Sub.2/2001/31), said that terrorism was a distinctive form of criminal activity which encompassed elements of politics and conflict, and concerned every region in the world in some way or another. Her mandate thus dealt with a problem of extreme complexity and diversity. The scope of her progress report had also been extended on the basis of several requests by the Commission on Human Rights to pay attention to a number of human rights questions relating to the principal issue of terrorism. It had been difficult to reconcile the need to provide theoretical insight into the complex issues raised by the impact of terrorism on human rights and the need to deal with the concerns voiced by the Commission.

32. She had processed a vast amount of information from a variety of sources, including the United Nations Office of Legal Affairs and the Terrorism Prevention Branch of the United Nations Office for Drug Control and Crime Prevention. Some important contributions from Governments and NGOs had unfortunately been received too late to be considered for the current progress report.

33. She drew attention, in the introduction to the report, to the mainly legal focus of the analysis. In chapter I, she highlighted the fact that the update on international action was not confined to the activities of the United Nations, but included action taken at the regional level. Chapter II took up the debate on the definition of terrorism, and attempted to avoid the existing

controversy within the Sub-Commission, concentrating instead on the question of who could be considered a potential user or author of terrorism. Rather than seeking to determine what conduct or acts could currently be included under the concept of terrorism, she had tried to approach the concept by reference to the instigators or authors in situations that were commonly perceived as "terrorism".

34. She had examined the foremost distinction between State and sub-State (or individual) terrorism, including the gradual blurring of the dividing line between terrorism and criminality. Within the category of State terrorism, she had addressed the issue of international State terrorism, which enlarged the scope of State terrorism to a degree that would include the use of force in international relations. With regard to sub-State terrorism, the wealth of literature and the existing controversy on the issue had convinced her that a detailed discussion should be postponed to a later stage.

35. In chapter III, she drew attention to the discussion of the possible terrorist use of weapons of mass destruction and to the role of new information technologies. Chapter IV was devoted to consideration of the concerns expressed by the Commission in its resolutions 1999/97, 2000/30 and 2000/31. In that connection she wished to highlight the fact that it included specific sections on the direct and indirect impact of terrorism on human rights, the question of impunity and extradition. Her conclusions, in chapter V, included the recommendation that the Sub-Commission should authorize her to prepare a second progress report.

36. Ms. PARKER (International Educational Development, Inc.), welcoming the progress report (E/CN.4/Sub.2/2001/31), said that she agreed with the conclusion that State terrorism produced far more gross violations of human rights than any other form of terrorism. China was currently involved in a violent assault on Falun Gong practitioners which amounted to State terrorism.

37. Under agenda item 3, the observer for China had attempted to justify his Government's campaign by claiming that the Falun Gong had caused deaths and the break-up of families. However, the investigation carried out by her organization had revealed that the only deaths had been at the hands of the Chinese authorities, as part of a campaign which included extreme torture, incarceration in mental hospitals and confinement in labour camps. The incident alleged by the regime to be proof of the Falun Gong's evil intent had been staged, and a video held by her organization demonstrated that to be the case.

38. In a recent report by the Special Rapporteur of the Commission on Human Rights on the question of torture, (E/CN.4/2001/66), reference was made to the torture of tens of thousands of Falun Gong practitioners. The Special Rapporteurs on violence against women and on extrajudicial, summary or arbitrary executions had attested to similar abuses. Information compiled by her own organization suggested that at least 50,000 Falun Gong practitioners had been detained, and hundreds of thousands, perhaps millions, were threatened by the Government's brutal campaign. The mechanisms of the United Nations were incapable of dealing with such huge numbers of victims.

39. She fully agreed with the Special Rapporteur's analysis of armed conflict and terrorism. Her organization had long been an opponent of attempts by Governments engaged in armed conflicts with opposition groups to reduce such conflicts to a terrorism/counter-terrorism model. That rhetoric was often used to undermine the right to self-determination, as in Indian-occupied Kashmir.

40. Referring to paragraph 71 of the progress report, she said that her organization had long objected to the use of terms such as "ethnic conflict" and "nationalist/separatist conflict" to describe the war between the Sri Lankan authorities and the Liberation Tigers of Tamil Eelam (LTTE), the war between the Turkish authorities and the Kurds, and the wars in Indonesia involving the Acehnese and Moluccans. Any analysis of those wars should take self-determination issues into account.

41. Referring to paragraphs 112 to 117 of the report, she noted that, while terrorism itself was generally viewed as an international crime, the way in which States prosecuted alleged terrorists under domestic legislation should be assessed as a human rights concern just like any other question of criminal justice. Her organization urged the Special Rapporteur to review domestic "anti-terrorist" scenarios, focusing on so-called terrorist lists.

42. Her organization also urged Governments to contribute to the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery to render possible meaningful participation in the sessions of the Working Group on Contemporary Forms of Slavery.

43. Ms. VERZEGNASSI (European Union of Public Relations) cited passages from the annual report of the United States Department of State on Patterns of Global Terrorism in 2000 concerning support by the Government of Pakistan for the Taliban in Afghanistan and for terrorist groups active in Kashmir. She further cited a passage from the Canadian Security and Intelligence Service's annual report to Parliament for 2000 concerning support by Pakistan for Sikh extremists, and from two Pakistani newspapers concerning official support for groups engaged in jihad.

44. The Government of Pakistan asserted that the terrorist groups had no bases on its territory but the groups themselves gave details of their addresses and bank accounts in Pakistan in their literature and on their Internet Web sites. India had been the victim of terrorism emanating from such groups for over a decade but the repercussions of their activities were also felt in Nepal and Bangladesh. Persons recently arrested in connection with assassination attempts and bomb blasts in Bangladesh asserted that they had been trained by the Pakistan-backed Taliban in Afghanistan.

45. The international community and human rights activists should single out and censure States which, in the name of religion and holy war, encouraged murder and mayhem in other countries.

46. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that a clear-cut distinction must be made between terrorism by States and terrorism by groups and/or individuals. Referring to the statement in the Special Rapporteur's previous report (E/CN.4/Sub.2/1999/27) that non-State authors of terrorist acts were not bound by the provisions

of international law, she urged Ms. Koufa to persist in her search for a precise definition of the notion of terrorism so that those committing acts of terrorism could be identified and categorized. The United Nations Commission on Crime Prevention and Criminal Justice might be able to assist her in the task. Other points that merited attention were compensation to victims of terrorist acts and the compilation of lists of States that financed and supported terrorist groups.

47. Some States supported a culture of war. For example, the Kurdistan Workers Party (PKK) had declared a cessation of the armed struggle in 1999, but its initiative had not met with the expected response from the Turkish authorities. As a result, thousands of Kurds in exile in Europe had declared themselves to be supporters and members of PKK. The United Kingdom had then taken the illogical step of adding PKK to its proscribed terrorist list. In Sri Lanka, the LTTE unilateral declaration of a ceasefire in December 2000 had been categorically rejected by the Sri Lankan Government, which characterized its hostilities as a "war for peace". Who were the terrorists under those circumstances?

48. The setting of mandatory standards and their effective enforcement with a view to ending all forms of terrorism, including fundamentalism and fanaticism, called for an effort of will on the part of the international community. Voting patterns in recent years on resolutions concerning human rights and terrorism in the Commission on Human Rights revealed, however, the extent of reservations and apathy among States, especially the five permanent members of the Security Council.

49. Mr.ÜNLER (Observer for Turkey) said that his country, having endured the effects of terrorism for many years, attached special importance to the fight against all terrorist acts and practices, which posed a serious threat to human rights, fundamental freedoms and democracy. The purpose of terrorist acts was to spread fear and to undermine the foundations of society, destabilizing Governments. Terrorist organizations financed their criminal acts through drug and arms trafficking and exploited the potential of new communication technology.

50. The Special Rapporteur had shown great courage in tackling such a sensitive topic. At a time when transnational terrorism was exploiting every available loophole in the judicial system, serious human rights violations by non-State actors, who were not subject to control by international law and human rights monitoring machinery, were a source of growing international concern. He hoped that the Special Rapporteur, who had announced her intention to address the subject, would attach increased importance to it in her next report.

51. He took issue with the title of chapter II, section B, subsection 4 "Manifestation of sub-State (or individual) terrorism", which he found ambiguous since it referred to actors who committed acts of terrorism against the State. The term "non-State actors" was preferable.

52. The progress report failed to lay sufficient emphasis on the fact that some States organized or encouraged terrorist activities on the territory of other States or tolerated activities on their territory aimed at the commission of terrorist acts.

53. More attention should also be given to the need for more effective international cooperation in the fight against terrorism, organized crime and drug trafficking.

54. Mr. GUISSÉ, commending the Special Rapporteur on her progress report, said that the subject presented two major challenges: drawing a line between State and non-State actors and defining a terrorist act. Context and perspective played a major role: depending on one's point of view, an act could be viewed as a contribution to national liberation or a violation of domestic or international law. Hence the difficulty of setting standards that were acceptable to all. A liberation movement considered its acts to be legitimized by the right of peoples to self-determination. He urged the Special Rapporteur to work on a precise definition of terrorism based on objective standards derived from legal norms. In his view, it was the most difficult study ever undertaken by the Sub-Commission.

55. Mrs. WARZAZI congratulated the Special Rapporteur on the impartiality and objectivity she had displayed in her progress report and the cautious approach she had adopted to an emotionally and politically charged subject. The Sixth Committee of the General Assembly had failed to agree on a definition of terrorism. An even thornier issue was who exactly qualified as a "terrorist". The progress report identified two categories of author: States and individuals or groups of individuals. The description of States that fell either directly or indirectly into that category was perfectly clear.

56. She shared the Special Rapporteur's view that a distinction must be made between armed conflicts and terrorism. In any case, it was unacceptable that a civilian population should be subjected to unlawful acts comparable to acts of terrorism. Such acts were, moreover, prohibited by Additional Protocols I and II to the Geneva Conventions. She also agreed that alarmist analyses of the potential use of weapons of mass destruction for terrorist purposes might divert attention from human rights violations associated with counter-terrorist strategies premised on those analyses. A further important point was that it was the responsibility and duty of States to protect the life and safety of those under their jurisdiction against acts of terrorism.

57. Lastly, it was clear that action taken by people under foreign occupation such as the Palestinians should on no account be assimilated to terrorism. While unreservedly deploring the fact that the victims were often innocent civilians, she stressed that the ultimate responsibility lay with the occupiers because such acts fortified them in their position of foreign occupation and allowed them to commit acts of State terrorism in return.

58. Mr. GOONESEKERE, having complimented the Special Rapporteur on her perceptive analysis of different forms of terrorism in terms of political science and international law, said that her deliberate avoidance of references to country situations was to be welcomed. The attention of States should be drawn instead to the conceptual analysis of the actors involved in State terrorism, State-supported or State-sponsored terrorism and international State terrorism. He agreed with the Special Rapporteur that such an approach made the lack of a universally accepted definition less of an obstacle. He also welcomed the fact that sub-State or individual terrorism was set in its proper historical perspective.

59. He wondered whether ordinary criminal legislation provided an adequate framework for dealing with terrorism. Most countries thought it did not, but any deviations from the ordinary criminal law should not go beyond the requirement to ensure national security in a democratic society.

60. He suggested that chapter IV, section A, subsection 2 entitled "Special note on judicial process rights" could usefully be expanded in the Special Rapporteur's next report.

61. Mr. EIDE praised the structure of the progress report, including the discussion of State and non-State terrorism and their manifestations. He welcomed the statement in paragraph 129 that States with good human rights records were less likely to have problems with domestic terrorism and that States with international relationships consonant with the Charter of the United Nations tended to be least affected by international terrorism. He also agreed with Mrs. Warzazi that acts of violence, albeit sometimes indiscriminate, often resulted from the unendurable circumstances of occupation.

62. He wondered whether the Special Rapporteur was justified in excluding from the study acts of "terror" (acts whose primary purpose was to spread terror, especially in the context of armed conflicts) and humanitarian law. She stated in paragraph 76 that the term "ethnic conflict" referred to a war that was still governed by humanitarian norms and was either a civil war or an international war. According to paragraph 77, it was rarely necessary, when it came to determining whether a situation was an armed conflict or terrorism, to decide whether an armed conflict was a civil war or one in which a group with a claim to self-determination was fighting for national liberation. He pointed out that the claim to be fighting for self-determination was often vastly overstated and unjustifiable under international law. Moreover, in the case of the situation in Sri Lanka, he noted that, in some contexts, the LTTE were engaged in an armed conflict against the Government - a conflict that was covered by humanitarian law - but that, in other contexts, they were responsible for acts of sheer terror, such as the use of suicide bombers, which did not fall within the definition of an armed conflict.

63. The concept of acts of terrorism should be distinguished from the notion of a terrorist actor. Not all perpetrators of acts of terrorism were terrorists. A State that engaged in some form of terror did not necessarily qualify as a terrorist State and a movement that sometimes committed acts of terror was not necessarily a terrorist organization. Given the need, however, for action to counteract the use of acts of terror, such acts should be covered by the study.

64. It might be useful to distinguish between sub-State terrorism carried out with the acquiescence of the State, for example where the authorities came from the same social or ethnic group as the perpetrators of acts of terror, and terrorism carried out by actors opposed to the dominant groups in society.

65. Lastly, he drew attention to the problem of militarization and enhanced internal security arrangements, associated in part with tensions arising from globalization, which led in some cases to the demarcation of part of a country's territory as a security area and to over-reliance on military means entailing what could sometimes be described as acts of terror.

66. Mr. GÓMEZ-ROBLEDO VERDUZCO said that the Special Rapporteur's progress report was an outstanding example of the use of rigorous legal analysis to address a politically explosive subject, thereby shedding light on controversial issues and contributing to the development of international law.

67. A number of treaties enshrined the principle of aut dedere aut judicare, by virtue of which a State party, faced with a request for extradition for an act of terrorism perpetrated in a third State, agreed to limit its sovereign authority to granting or refusing extradition. The principle was an important one because it restricted the parties' freedom to describe the crimes concerned as "political". The principle could have implications for common law also, although State practice was not uniform. In any case, the fight against terrorism should be primarily of a preventive nature and an effective and satisfactory system should be developed to respond to terrorist acts.

68. Although it was preferable to abstain from making a rigid definition of terrorism, that should not prevent a thorough examination of some of the essential elements required to establish an appropriate definition.

69. Lastly, he wondered whether the extradition mechanism should be improved with a view to improving the administration of justice; whether the so-called "principle of universal jurisdiction" should be strengthened both internationally and in internal legislation; and whether the international legal framework for the fight against terrorism was adequate, since many conventions were riddled with ambiguities.

70. Ms. ZERROUGUI said that she, too, was concerned about extradition, owing to the ambiguities that existed in many relevant conventions. The issue should be examined further so as to underline the legal vacuum which, at times, allowed terrorists to benefit from impunity. The previous speaker had mentioned the problem that arose when a terrorist act was classified as a political act and certain States refused to extradite terrorists for humanitarian reasons, for example, the existence of the death penalty or the impossibility of a fair trial in the State requesting extradition.

71. There was also a problem when no treaty existed; certain countries having an Anglo-Saxon tradition required a treaty in order to cooperate or, in the absence of a treaty, that cooperation should be on a reciprocal basis. In the absence of a treaty, nothing obliged such States to extradite or prosecute a person accused of terrorism in another country. Prosecution was sometimes impossible because there were no provisions for extraterritorial jurisdiction for crimes committed abroad, by foreigners, against foreign interests. She hoped that the issue would be analysed further and that, as in the case of crimes against humanity, States would cooperate so that terrorists did not escape punishment.

72. Ms. MOTOC said that, in view of the fine line that the report drew between terrorists and freedom fighters and the different conceptions of justice that existed within the United Nations and even within the Sub-Commission itself, it might be advisable to try to define terrorism.

73. With regard to the conceptual framework, the progress report (para. 66) stated that the basic notion embodied in the Charter of the United Nations was that the threat or use of force was prohibited in international relations unless undertaken in self-defence (Article 51) or in terms of the exception provided for in the final sentence of the domestic jurisdiction clause (Article 2, paragraph 7). In the latter case, the United Nations could become involved under

Chapter VII, if the Security Council determined the existence of a threat to the peace. In fact, the Security Council had already stated that terrorism was a threat to peace, but further juridical clarification on that point was clearly needed.

74. Also, with regard to exceptions to the prohibition to resort to force, it was necessary to examine the new issue of humanitarian intervention and the mandates given by the United Nations to States prepared to become involved in certain situations that the Security Council considered to be a threat to the peace.

75. Mr. JOINET said he agreed that it was too early to establish definitions, which could change with the passage of time. The distinction between terrorism and armed conflict was a complex one, in particular, in the case of armed conflicts linked to wars of independence. He was thinking, for example, of the French Resistance in the Second World War. It might be useful to consider what became of the concept of terrorism when there was a process of democratization; in other words, when a goal had been partly attained through political violence, the question arose whether such violence had or had not been legitimate. It was necessary to analyse the specific circumstances of each case but it was important also to recall the preamble to the Universal Declaration of Human Rights which stated that it was essential, if man was not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

76. In that regard it was interesting to examine the evolution of ETA, the Basque separatist movement, in Spain. That struggle, using violence or political action, together with other efforts, had led to the demise of Francoism, while similar movements had ended the Salazar regime in Portugal and other regimes in the western hemisphere. It was interesting to see how terrorism gradually adapted to the evolution of history. Consequently, in line with the preamble to the Universal Declaration, political violence could be legitimate when used to fight tyranny but was totally indefensible once the tyranny had been overthrown. There was a fundamental rule, however, that was always applicable, whether during a struggle against tyranny or subsequently, and that was that the civilian population must never be targeted.

77. Ms. BALOUCH (Observer for Pakistan) said that Pakistan condemned terrorism in all its forms and had ratified most of the relevant international instruments. The role of the Sub-Commission was to address the underlying root causes, that resulted in people resorting to non-peaceful means of protecting their fundamental human rights. Her delegation believed that those factors should form the basis for defining whether or not an act constituted terrorism, rather than the identity of the victim or the nature of the act.

78. Some States had made use of the absence of a definition of terrorism to justify systematic human rights violations in disputed territories under their occupation or control or to deny people their right to self-determination by branding liberation movements as terrorist activities; the Non-Aligned Movement had repeatedly stressed the need to address the issue of defining terrorism.

79. The concept of terrorism should be qualified to take into consideration the principles of self-determination and self-defence, which were essential to international law and international relations, as well as the circumstances which led to the use of non-peaceful means to restore

fundamental rights. State terrorism should be penalized as it was the most pervasive form of terrorism and accounted for the largest number of casualties; it was also one of the worst forms of terrorism, because it was conducted by organs of the State against its own population or the population of an occupied territory. However, it was not restricted to totalitarian or militarist regimes as indicated in the report (para. 43), and some "democracies" were currently employing terrorist activities to instil fear.

80. While her delegation agreed with most of the analysis of State-sponsored terrorism in the report, it contested the inclusions of moral and diplomatic encouragement by a State as a form of State-sponsored terrorism. That again revealed the need to clarify that a legitimate struggle for freedom and self-determination did not constitute terrorist activities. A clear distinction must be made between the support given by a State to oppressed or occupied people and the form of State-sponsored terrorism aimed at creating anarchy or overthrowing a legitimately constituted State.

81. Some States had stigmatized the reaction of oppressed people seeking justice and the implementation of their human rights as terrorism. In such a situation, as the Special Rapporteur maintained, the States were unwilling to take seriously and impartially their obligations under the enforcement provisions of humanitarian law instruments.

82. Mr. SORABJEE said that the definition of terrorism would be influenced according to the situation in the State where it took place and whether the State was a tyrannical one or whether it had remedies that could be used to improve a situation. Nevertheless, he agreed with Mr. Joinet that, whatever the circumstances, the use of indiscriminate violence against innocent civilians was indefensible.

83. Mrs. WARZAZI, Special Rapporteur on traditional practices affecting the health of women and the girl child, introducing her fifth report (E/CN.4/Sub.2/2001/27), said that, since 1996, only 44 countries had provided the information she had requested on traditional practices affecting the health of women and the girl child, and it was the Asian countries, where many such traditional practices existed, which had been the most remiss in providing information.

84. Africa was firmly committed to the fight against those practices and most African Governments had recognized the damaging effects of such traditional customs of which they had previously been unaware because of the veiling effects of culture and religion. Information and awareness-raising campaigns conducted by the authorities, influential members of society and local NGOs had contributed to changing attitudes. Religious leaders and the young were making an important contribution in that regard.

85. There was reason to be satisfied with the progress achieved since 1982 in making the international community aware of the violence suffered by women and girl children throughout the world as a result of traditional practices. Governments were currently paying particular attention to such violence as reflected in the responses that had been transmitted to her, but also in the statements that the Secretary-General had addressed to the General Assembly, which had been examining the issue of traditional practices and adopting pertinent resolutions.

86. It was urgent that Asian NGOs should forward information on practices that were harmful to the women and girl children of their continent. In the absence of such information, she had consulted the media and found numerous cases of violence against women, resulting from traditional practices. For example, it was reported that, in Baghdad, in April 2001, several women had been executed, without trial, for prostitution; 40 women had been strangled in Iran, in a nine-month period, because conservative forces had given themselves the task of eradicating prostitution and social ills; and hundreds of crimes had been committed in Turkey in the name of honour. The Turkish authorities were adopting the necessary measures, but the "honour" crime appeared to be on the increase.

87. Since 1961, the national authorities had been taking steps against the dowry custom in India and neighbouring countries with similar traditions. It appeared that about 13,000 young wives were killed each year in India because of dowry-related problems, although women's organizations considered that the actual figure was much higher. The international community should pay more attention to that issue.

88. Traditional practices of all kinds should be monitored carefully and dealt with extremely prudently, both nationally and internationally. To ensure success, it was necessary to gain the confidence of the Governments and populations concerned.

89. Lastly, she thanked the Governments, the International Monetary Fund (IMF), the United Nations Food and Agriculture Organization (FAO), the Organization for African Unity (OAU), and the inter-African Committee for their cooperation in activities to eliminate all harmful practices, and for the financial assistance contributed by certain Governments and international NGOs towards eliminating such practices.

The meeting rose at 1 p.m.